


3 1761 11764668 7







Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761117646687>





CA1  
J S  
-65572

\$2.50

# JUVENILE DELINQUENCY IN CANADA

THE REPORT OF THE DEPARTMENT OF JUSTICE

COMMITTEE ON JUVENILE DELINQUENCY

Rec  
250







## JUVENILE DELINQUENCY

### IN CANADA

The Report of the Department of Justice  
Committee on Juvenile Delinquency

Published by Authority of  
The Honourable Lucien Cardin  
Minister of Justice and Attorney-General of Canada

© Crown Copyrights reserved

Available by mail from the Queen's Printer, Ottawa,  
and at the following Canadian Government bookshops:

OTTAWA

*Daly Building, Corner Mackenzie and Rideau*

TORONTO

*Mackenzie Building, 36 Adelaide St. East*

MONTREAL

*Æterna-Vie Building, 1182 St. Catherine St. West*

WINNIPEG

*Mall Center Bldg., 499 Portage Avenue*

VANCOUVER

*657 Granville Avenue*

or through your bookseller

A deposit copy of this publication is also available  
for reference in public libraries across Canada

Price \$2.50

Catalogue No. J2-1965

*Price subject to change without notice*

ROGER DUHAMEL, F.R.S.C.

Queen's Printer and Controller of Stationery

Ottawa, Canada

1965



Report of the Department of Justice Committee on  
Juvenile Delinquency

TABLE OF CONTENTS

PART I - INTRODUCTORY

	Page
Chapter I PROCEDURAL AND GENERAL	1
Reasons for the Inquiry	1
Terms of Reference	2
Scope of the Inquiry	2
Conduct of the Inquiry	3
Acknowledgments	4
Chapter II NATURE AND EXTENT OF JUVENILE DELINQUENCY IN CANADA	5
Problems of Definition and Statistics	5
Trends in Juvenile Delinquency	7
Disposition of Juvenile Cases	8
Employment Status of Delinquent Juveniles	8
Educational Standing of Delinquents	9
The Youthful Offender	9
Disposition of Youthful Offender Cases	10
Educational Status of Youthful Offenders	10
Employment Status of Youthful Offenders	10
Nature of Juvenile Delinquency	10
Improvement of Statistics	11
Causation	11
Theories of Causation	12
Implications for Prevention	19
Chapter III THE COMMITTEE'S APPROACH TO THE PROBLEM	25
<u>PART II - LEGAL CONTROL OF JUVENILE BEHAVIOUR</u>	
Chapter IV THE FRAMEWORK	29
Constitutional	29
The Juvenile Delinquents Act	30
Provincial Control of Juvenile Anti-Social Behaviour	31
Financing Child Welfare Services	32

		Page
Chapter	V THE JUVENILE DELINQUENTS ACT	35
	Geographical Scope	35
	Nomenclature	36
	Jurisdiction Generally	40
	Minimum Age Jurisdiction	40
	The Doli Incapax Rule	53
	Maximum Age Limits	54
	Jurisdiction Over Offences	62
	Waiver of Jurisdiction	77
	Disposition	85
	 PART 111 - TREATMENT OF THE JUVENILE OFFENDER	
Chapter	V1 PHILOSOPHY AND MEANING OF TREATMENT	105
Chapter	V11 TREATMENT PRIOR TO JUDICIAL DETERMINATION OF DELINQUENCY	109
	The Police	109
	Detention Facilities and Practices	115
	Protection of the Child Witness	119
Chapter	V111 THE JUVENILE COURT	130
	The Juvenile Court Judge	130
	The Juvenile Court Committee	134
	Procedures and Practices in the Juvenile Court - General	138
	Publicity and Private Hearings	139
	Counsel	142
	Notice: Duty to Attend Proceedings	145
	Conduct of Proceedings	147
	Informality and Informal Treatment	150
	Rules of Court	153
	Appeals	154
Chapter	1X TREATMENT SUBSEQUENT TO JUDICIAL DETERMINATION OF DELINQUENCY	163
	Introduction	163
	Diagnosis and Treatment Plan	164
	Pre-Sentence Reports	164
	Psychological and Psychiatric Investigation	164
	Confidentiality	165
	Detention Facilities and Practices	166
	Powers of Disposition	166
	The Judicial Screen	167
	Adjournment "Sine Die"	168
	Absolute Discharge	169



	Page
Treatment Prior to Final Disposition	170
Disposal of Outstanding Charges	171
The Fine	171
Restitution	172
Probation	173
Foster Home Placement	176
Committal to a Children's Aid Society	178
Training School Committal	179
Transfer to an Adult Institution	182
Other Facilities	184
After-Care	186
Orders for Support	187
The Juvenile Court Record	189

#### **PART IV - CRIMINAL LIABILITY OF PARENTS AND OTHER ADULTS**

---

Chapter X	199
Introduction	199
"Punish the Parent" Laws	200
Restitution by Parents	205
Contributing to Delinquency	206
Juvenile Court Jurisdiction Over Criminal Offences Committed by Adults	210
Chapter X1	223
Introduction	223
The Home	226
The Church	228
The School	230
Delinquency and Employment Opportunities	239
Community Programs	246

#### **PART VI - RESEARCH**

---

Chapter X11	273
-------------	-----

#### **PART VII - CONCLUSION AND SUMMARY OF RECOMMENDATIONS**

---

Chapter X111 CONCLUSION	279
Youth and Delinquency Research and Advisory Centre	279
Demonstration Projects	280
Staff Training	281
Chapter XIV SUMMARY OF RECOMMENDATIONS	283

Chapter XV APPENDICES	Page
	301
Appendix "A" - Institutions Visited	301
Appendix "B" - Juvenile and Family Court Sittings Attended	302
Appendix "C" - Briefs Submitted to the Committee	302
Appendix "D" - Statistical Tables	306
Table 1 - Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961 (Graph)	306
Table 2 - Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961, Canada	307
Table 2(a) - Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961, Newfoundland	308
Table 2(b) - Juveniles 7-15 years of Age Brought to Court and Found Delinquent, 1957-1961, Prince Edward Island	308
Table 2(c) - Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961, Nova Scotia	309
Table 2(d) - Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961, New Brunswick	309
Table 2(e) - Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961, Quebec	310
Table 2(f) - Juveniles 7-15 Years of Age Brought to Court and Found	



		Delinquent, 1957-1961, Ontario	Page 310
Table	2(g) -	Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961, Manitoba	311
Table	2(h) -	Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961, Saskatchewan	311
Table	2(i) -	Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961, Alberta	312
Table	2(j) -	Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961, British Columbia	312
Table	2(k) -	Juveniles 7-15 Years of Age Brought to Court and Found Delinquent, 1957-1961, Yukon - N.W.T.	313
Table	3 -	Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, Canada	314
Table	3(a) -	Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, Newfoundland	315
Table	3(b) -	Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, Prince Edward Island	315
Table	3(c) -	Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, Nova Scotia	316

		Page
Table	3(d) - Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, New Brunswick	316
Table	3(e) - Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, Quebec	317
Table	3(f) - Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, Ontario	317
Table	3(g) - Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, Manitoba	318
Table	3(h) - Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, Saskatchewan	318
Table	3(i) - Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, Alberta	319
Table	3(j) - Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, British Columbia	319
Table	3(k) - Disposition for Juveniles 7-15 Years of Age Brought Before the Court, 1957-1961, N.W.T. - Yukon	320
Table	4 - The Number and Percentage Distribution of Employment Status of Juveniles (7-15) Found Delinquent in Canada, 1957-1961.	321
Table	5 - Employment Status of Juveniles (7-15) Brought Before the Court	

		and Found Delinquent - Canada - 1957-1961.	Page 322
Table	6 -	The Number and Percentage Distribution of Education Status for Juveniles (7-15) Found Delinquent in Canada - 1957-1961.	325
Table	7 -	Education of Juveniles (7-15) Brought Before the Court and Found Delinquent - Canada - 1957-1961.	327
Table	8 -	Persons 16-24 Years of Age Charged and Convicted, 1957-1961, Canada	331
Table	8(a) -	Persons 16-24 Years of Age Charged and Convicted, 1957-1961, Newfoundland	332
Table	8(b) -	Persons 16-24 Years of Age Charged and Convicted, 1957-1961, Prince Edward Island	332
Table	8(c) -	Persons 16-24 Years of Age Charged and Convicted, 1957-1961, Nova Scotia	333
Table	8(d) -	Persons 16-24 Years of Age Charged and Convicted, 1957-1961, New Brunswick	333
Table	8(e) -	Persons 16-24 Years of Age Charged and Convicted, 1957-1961, Quebec	334
Table	8(f) -	Persons 16-24 Years of Age Charged and Convicted, 1957-1961, Ontario	334
Table	8(g) -	Persons 16-24 Years of Age Charged and Convicted, 1957-1961, Manitoba	335
Table	8(h) -	Persons 16-24 Years of Age Charged and Convicted, 1957-1961,	



	Page
Table 14(c) - Education Status of Youthful Offenders (16-24) Convicted in Canada, 1958	356
Table 14(d) - Education Status of Youthful Offenders (16-24) Convicted in Canada, 1957	356
Table 15 - Employment Status - Convicted Youthful Offenders (16-24) - Canada, 1957-1961 (Graph)	357
Table 16 - The Number and Percentage Distribution of Employment Status of Youthful Offenders (16-24) - Convicted in Canada, 1957-1961	358
Table 17 - Employment Status of Youthful Offenders (16-24) Convicted in Canada, 1957-1961	359
Appendix "E" - Intake Procedure in the Vancouver Juvenile Court - (Reprinted from the Report of the Standing Committee on Probation of the Association of Juvenile and Family Court Judges of Ontario (1961)	361
Appendix "F" - Gigeroff, "Counselling - Time Study of the Supervision of Juvenile Probationers in Ontario" (unpublished, 1963)	363
Appendix "G" - Section on Training of Personnel for Services to Juvenile Delinquents, from the Report of the Committee on Juvenile Delinquency of the Social Planning Council of Metropolitan Toronto	366
Appendix "H" - Observations on the Framework of Correctional Research in Canada, from Grygier, "Current Correctional	

	Page
and Criminological Research in Canada: Present Framework, Trends and Prospects", 3 The <u>Canadian Journal of Corrections,</u> <u>423, 424-425, 437-440 (1961)</u>	373





Report of the Department of Justice Committee on  
Juvenile Delinquency

The Honourable Lucien Cardin, P.C., Q.C., M.P.,  
Minister of Justice,  
Ottawa.

Sir:

As an advisory committee of the Department of Justice appointed to consider the problem of juvenile delinquency in Canada we have the honour to submit, respectfully, the attached report.

PART I     INTRODUCTORY

CHAPTER 1

PROCEDURAL AND GENERAL

Reasons for the Inquiry

1. In 1960 the Correctional Planning Committee of the Department of Justice set out in a report to the Minister of Justice a long-range plan for the development of federal correctional services, with special reference to the penitentiary system. In that report the following statement appears:

"The development of a correctional program along the lines that we recommend will not solve the basic problem of crime in Canada but will only serve to prevent the problem from becoming increasingly more acute. The federal system can only operate in relation to persons who have committed at least a first offence. The best way to prevent crime is to eradicate those influences that produce criminals. There should, therefore, be an organized, integrated approach in Canada to the problem of juvenile delinquency in order to discover, at an early stage, those children who are in danger of becoming delinquent and to correct their maladjustments at that time. Unless this is done there is no real hope of stopping the flow of an ever increasing number of young adult offenders through the criminal courts and into Canadian prisons." (1).

2. In 1961 Canadians knew that there was a problem of juvenile delinquency in Canada. What was not known was the nature and extent of the

problem. It was known that on the basis of the 1956 census some thirty-eight per cent of Canada's population were of the age of nineteen years or younger. By 1961 that figure had risen to forty-two per cent. The greatly increased birth rate that occurred during World War II and in the years thereafter was, of course, being reflected in the numbers of persons who were coming into their teens - numbers that annually were beginning to exceed by tens of thousands the numbers that became teen-agers in any previous year in Canada's history.

3. The penitentiary population (persons serving sentences of two years or more) had increased from 4,600 in 1952 to 6,800 in 1961, an increase of fifty per cent in nine years. There was no doubt that the persons who would be problems for the Royal Canadian Mounted Police, the Penitentiary Service and the National Parole Board in 1971 would be those who, in 1961, were attending grade school or were about to attend grade school. The persons who would be the federal government's problem in twenty years would be those who were born in 1961 or in the years immediately following. Obviously if Canada were to be able to do any planning in the 1960's to deal with the problem as it might exist in ten or twenty years it would be necessary first of all to learn what the problem is today and how, today, an attempt might be made to devise a solution for tomorrow.

#### Terms of Reference

4. Accordingly we were appointed on November 6th, 1961, to:

- " (a) inquire into and report upon the nature and extent of the problem of juvenile delinquency in Canada;
- (b) hold discussions with appropriate representatives of provincial governments with the object of finding ways and means of ensuring effective co-operation between federal and provincial governments acting within their respective constitutional jurisdiction; and
- (c) make recommendations concerning steps that might be taken by the Parliament and Government of Canada to meet the problem of juvenile delinquency in Canada.

#### Scope of the Inquiry

5. At the outset it was necessary to decide upon the scope of the inquiry to be undertaken. With a narrow approach, only those specific areas within Parliament's jurisdiction would be investigated. Attention would then be

focused on the Juvenile Delinquents Act, R.S.C. 1952, c. 160 (hereinafter referred to as "The Act") and more remotely, on the penitentiary system as it is affected by delinquency on the part of young persons. On the other hand, a broad approach would involve an inquiry into fields largely outside the jurisdiction of Parliament, such as home, school, church, recreational activities and, indeed, the whole field of child welfare. Carried to the extreme, it could take in such questions as urban renewal and social re-organization. We felt that a somewhat broad approach would be required if we were to obtain a reasonable understanding of the total problem as it exists in Canada.

### Conduct of the Inquiry

6. We commenced our study in January, 1962.

7. In order to understand the problem of delinquency - including such matters as prevention, treatment and research - we sought out the opinions of persons knowledgeable in a number of fields and activities. We met with officials of provincial government departments, with juvenile and family court judges, training school personnel, probation officers, university professors, private agencies, and with other individuals and organizations throughout Canada having an interest in various aspects of delinquency prevention and control.

8. Our meetings proceeded informally and, although evidence was not recorded as such, we made notes of the relevant points in the discussions. We also visited a number of institutions and facilities for children, and attended juvenile court sittings wherever possible. (See Appendices "A" and "B").

9. We commenced our work with high hopes that we would be able, within a relatively brief time, to marshal an impressive body of facts, experience and opinion concerning our subject. At an early stage, however, we came to realize that these hopes were unrealistic. To begin with, we found that there was no central clearing-house for relevant, accurate statistical and other information concerning the many aspects of the problem. In terms of experience we found a wide variation as between the several provinces, each acting within its own jurisdiction and in pursuance of its own independent policies. We can say that in interviews and briefs we encountered no lack of opinion concerning the many questions we raised. In writing this Report, however, we have kept in mind that opinion alone - not well-supported by evidence based on fact and experience - is not a sound base upon which to erect a legislative program or an administrative policy.

10. For these reasons we regard certain parts of our inquiry as being, of necessity, preliminary in nature. We think that more intensive and detailed studies should follow in a number of specific areas of the problem to which we shall refer. The many excellent briefs submitted by the various groups and the transcribed oral submissions should serve as useful background material for any



such studies. (See Appendix "C").

11. This inquiry has taken much longer to complete than was anticipated at the beginning. Since none of the Committee members had worked in the juvenile field we were not entirely aware of the complexity of the problems that the subject presents, especially under a constitution that divides jurisdiction arbitrarily and sometimes illogically between Parliament and the provincial legislatures. There was much for us to learn and we needed time to learn it. It took time to digest what we had learned and to translate it into proposals on which there was a substantial measure of agreement. We were five members, representing four divisions of the Department of Justice: the Criminal Law Section, the Royal Canadian Mounted Police, Penitentiaries and Parole. Three members were relieved of their ordinary departmental duties for some fifteen months to carry out the work of fact-finding and opinion-gathering. Just as that work was completed, however, it was necessary for them to resume their ordinary departmental duties. Thus the delay in producing this Report.

#### Acknowledgements

12. We wish to record our gratitude and appreciation for the help we received from the many persons who made oral presentations or were involved in the preparation and submission of briefs. The provincial government departments concerned with the problem of delinquency were, in every case, extremely co-operative. We wish to acknowledge in particular the assistance of the Judicial Section of the Dominion Bureau of Statistics in compiling statistical tables and graphs for our use.

#### Footnotes

1. Report of the Correctional Planning Committee of the Department of Justice (1961), pp.5-6.

## CHAPTER 11

### NATURE AND EXTENT OF JUVENILE DELINQUENCY IN CANADA

#### Problems of Definition and Statistics

13. To determine the nature and extent of juvenile delinquency in Canada we looked to the Judicial Section of the Dominion Bureau of Statistics. We received from the Bureau the statistical tables that are attached as Appendix "D".

14. We should point out immediately the danger of not exercising caution in interpreting the results shown in the various tables. If, for example, we are interested in determining how many juveniles committed acts of delinquency in Canada in 1961, we should expect the answer to be found in the publications of the Dominion Bureau of Statistics. Such is not the case. The publications merely record the number of juveniles found to be delinquent by the courts. Moreover, in this latter respect, the Judicial Section must depend upon the local courts for accurate reporting. Unfortunately, not all courts have been sufficiently diligent in the performance of their statutory duty. (1). The result is that we do not even have accurate statistics of the juveniles found to be delinquent.

15. Even if accurate statistics were available they would not fully answer our basic question of how many juveniles committed acts of delinquency in a particular year. It is well recognized that only a relatively small percentage of youthful delinquent conduct is brought to the attention of the authorities. The nature of the offence and the intensity of law enforcement are the important factors in this respect. Serious crimes such as murder and arson, for example, are usually reported to the police. However, many sex offences, petty thefts, assaults and the like are not reported. The size of the sample of such crimes varies directly with the intensity of law enforcement.

16. There is a further indeterminate factor that results from variations in the practices of law enforcement and welfare agencies. Differences as between provinces in child welfare legislation and in the administration of child welfare services account for part of the difficulty in interpreting available statistical data. (2). In one province, for example, it may be customary to deal with certain classes of cases under provincial child welfare legislation, whereas in another province proceedings are brought under the federal Juvenile Delinquents Act. Probably more significant, however, are variations of an administrative nature at the community level. Many juveniles whose conduct is known to be delinquent are not taken into court at all. Middle class children in particular are much less likely than children from lower socio-economic groups to become delinquency statistics because their behavioural problems are dealt with either in the home or by social agencies, apart altogether from formal legal proceedings. (3). Where a community lacks such social services a court hearing may be required regardless of the administrative disposition of a matter that might

otherwise be made. Whether a behavioural problem is considered to be a juvenile delinquency problem, therefore, often depends upon whether it is dealt with by a social agency or by a court - and, in the latter event, whether proceedings are brought pursuant to child welfare legislation or under the federal Act. (4). This point is notably borne out by the experience of two cities of comparable size in one province. The rate of court findings of delinquency in the one city was approximately four times the rate in the other in the same year, yet there is no reason to suspect that there is substantially more juvenile misconduct in the one city than in the other. (5).

17. The Act defines "juvenile delinquent" to mean

"any child who violates any provision of the Criminal Code or of any Dominion or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute." (6).

This definition classifies together, both legally and statistically, the child who has contravened the Criminal Code and the one who has breached the provisions of any provincial or municipal by-law. The definition thus fails to differentiate between a violation such as truancy or a breach of a provincial liquor statute, on the one hand, and an act such as assault or theft, on the other. Every child inevitably violates some ordinance or law while growing up. All certainly do not fall within the popular conception of "juvenile delinquent". The juvenile courts would soon be overburdened if all juveniles who committed delinquent acts were brought to their attention. The fact is that most juveniles who commit minor violations are not brought to the attention of the court. In the result it is extremely difficult to get a clear statistical picture of the nature and extent of juvenile delinquency in Canada.

18. We had to decide, for our purposes, what should be counted or measured, that is, what we meant by delinquency. There are two principal choices. One was to count both official and informal cases. The other was to limit our analysis to officially recorded delinquency only. On reviewing the statistical material gathered throughout the country it became apparent that data on informal dispositions was not complete enough to justify its use. Moreover, as we have noted, policy varies widely in determining which children are brought to court. This is so as between provinces and, indeed, often as between cities in a single province. Consequently the ratio between informal and formal dispositions is not constant nor could it be estimated for the country as a whole. We therefore counted only those children who had been officially found



delinquent by the court, even though, as we shall show, many regard such a record of official delinquency as largely a matter of accident. (7).

19. In order to attempt realistic comparisons of trends and changes in juvenile delinquency we chose eight classes of offences that can reasonably be expected usually to be reported to the authorities. These classes are: assault and causing bodily harm; assault on a peace officer and obstructing; murder, attempted murder and manslaughter; breaking and entering; robbery; false pretences; theft; and forgery and uttering. The trends are depicted in Tables 1 and 2 of Appendix "D". (8). The Tables relate to the age group 7 to 15 years, inclusive, and show rates, per hundred thousand population, not only in respect of the selected offences listed above, but also for all offences reported to the Dominion Bureau of Statistics. (9). The Tables show rates for Canada as a whole and also for the individual provinces and territories.

20. We emphasize again that differences in court policy, differences in police policy, failure to report to authorities, and organizational differences all affect the data available. (10). This should be kept in mind when the Tables in Appendix "D" are being considered. We also emphasize that our statistics relate only to persons under sixteen years of age. We found it impracticable to include, for purposes of comparison, statistics relating to persons sixteen and seventeen years of age, over whom the court has jurisdiction in three provinces.

#### Trends in Juvenile Delinquency

21. In 1957 the overall population of Canada (including juveniles) was 16.6 million. By 1961 it had risen to 18.2 million, an increase of 9 1/2 per cent. During the same period the number of juveniles brought before the court increased from 371 to 435 per hundred thousand, a rise of 17 per cent, or almost double the rate of increase in the general population. The number found delinquent, per hundred thousand, increased from 308 to 392, or 27 per cent, nearly triple the rate of increase in the general population.

22. The number of those brought before the court for the selected offences that we have mentioned in paragraph 19 rose from 190 to 235 per hundred thousand, that is 23 per cent. The number of those found delinquent went from 160 to 220 per hundred thousand, or 37 per cent.

23. In summary, the significance of paragraphs 21 and 22 may be more readily apparent from the following table:

#### Percentage Increases Between 1957 and 1961

General Population	9.5%
Juvenile Court Appearances - all cases	17%
Adjudged Delinquent - all cases	27%
Juvenile Court Appearances - selected cases	23%
Adjudged Delinquent - selected cases	37%

24. These increases tend to become alarming when we consider what has been happening in respect of the juvenile population alone:

Increase in General Population of Persons  
Under 15 Years of Age since 1941  
(in millions)

---

<u>1941</u>	<u>1951</u>	<u>1956</u>	<u>1961</u>
2.09	3.11 (increase 47%)	3.79 (increase 21%)	4.33 (increase 14%)

25. If the 1961 rate for selected offences is used in conjunction with a population projection it would seem to be inevitable to expect a marked increase in juvenile delinquency in coming years. The increase will become even more alarming if the 1957-1961 trend in frequency of offences, already noted, should continue.

26. The trends in juvenile delinquency in each of the provinces and territories of Canada between 1957 and 1961 are set out in Appendix "D".

#### Disposition of Juvenile Cases

27. Table 3 is a summary of the disposition of juvenile cases in Canada for the years 1957 to 1961, inclusive. It is of interest to note that the number of children placed on probation has increased in each of the years being considered. These totals (obtained by totalling the numbers placed on probation to the court and the numbers placed on probation to parents) were 3632 in 1957, 5323 in 1958, 5689 in 1959, 6840 in 1960 and 6944 in 1961. These totals represent 41%, 52%, 54%, 55% and 52%, respectively, of the number of children found delinquent in the successive years. It will also be noted that the number of children committed to training schools increased over the five-year period. In 1957 the total of such children was 1508, in 1958 the total was 1704, in 1959 the total was 1590, in 1960 it was 1696 and in 1961 the total was 1860. These totals represent 17%, 17%, 15%, 14% and 14%, respectively, of the number of children found delinquent for each of the years in question. There has, therefore, been a slight decrease in the proportion of children sent to training schools over the five-year period.

#### Employment Status of Delinquent Juveniles

28. Table 4 is a summary of the employment status of the juveniles found delinquent in Canada from 1957 to 1961, inclusive. Only a small percentage -

a high of 5.5% in 1957 to a low of 2.4% in 1961 – were employed at the time of being found delinquent. Similarly, only a small percentage were unemployed the high being 4.9% in 1958. The low of 2.9% was recorded in 1961. By far the largest number of children found delinquent were students. The lowest percentage in this category was 88.2 in 1959 and the highest was 92.6 in 1961.

29. Table 5 summarizes the same information according to the ages of the children, including those who appeared before the court and those who were found delinquent. As might be expected the largest proportion of those children having the status of employed or unemployed are found among the age 14 and 15-year-olds with the 15-year-olds contributing the higher number.

### Educational Standing of Delinquents

30. Table 6 summarizes the data on the educational status of the children found delinquent in Canada (1957 to 1961 inclusive). It will be noted that children in Grades 6, 7 and 8 made up over 50% of those found delinquent in each of the five years.

31. Table 7 summarizes the information on educational status according to age, both for children appearing before the court and those found delinquent. According to this data children in Grades 6, 7, 8 and 9 contributed between 65 and 70 per cent of those found delinquent. It would appear also that a large proportion of the children were a year or more behind the average grade for their age. In regard to the age groupings of the children found delinquent those 12 to 15 years, inclusive, accounted for the greatest proportion. Indeed, this age group constituted 86 to 88% of the total number found delinquent during the five-year period. Children under 10 years of age were only a very small percentage of those found delinquent.

### The Youthful Offender

32. In this Report we describe the 16 to 24-year-old delinquent as the "youthful offender".

33. Table 8 covers both Canada and the provinces and sets out the rates per hundred thousand for the age group 16 to 24 years, inclusive, both for all offences and for the selected offences. The rates for Canada in this group are more than twice as high for all offences than the corresponding rates for juveniles, that is, those under sixteen years. The difference in the rates for selected offences for Canada between the youthful offenders and the juveniles is even more pronounced, being more than three times as high for the older group.



## Disposition of Youthful Offender Cases

34. Table 9 indicates the disposition of youthful offender cases by percentages over the five-year period, 1957 - 1961. It will be noted from this graph that the use of suspended sentence coupled with probation has increased for this age group commencing with the year 1959. It also indicates that there has been a decrease in the use of fines as a disposition, whereas the percentage of cases in which a jail term was imposed has increased slightly. Table 10 summarizes the same data.

35. Table 11 sets out the same information on the disposition of youthful offender cases by totals, both for Canada and for the individual provinces. It will be observed that the number of youthful offenders sent to penitentiary has remained relatively constant since 1958.

## Educational Status of Youthful Offenders

36. Table 12 indicates the educational status of youthful offenders by percentages. Table 13 summarizes the same information. The youthful offender group, having an educational status ranging from illiterate up to and including Grade 8, contributed from 49% to 54% of those convicted over the five-year period. Table 14 summarizes the same information on educational status according to totals.

## Employment Status of Youthful Offenders

37. Tables 15 and 16 summarize the data on the employment status of the youthful offender group, while Table 17 provides the same information according to the age of the offender. It will be observed that the percentage unemployed in this age group ranged from a low of 9.8% in 1957 to a high of 11.8% in 1959. The percentage in the student category increased from 7.9% in 1957 to 11.8% in 1961. Table 17 indicates that the 16 and 17-year-olds contributed the highest totals both to the unemployed group and to the student group when compared with the other age categories over the five-year period.

## Nature of Juvenile Delinquency

38. Table 18 depicts the nature of delinquencies committed by juveniles in the period 1957-1961. Offences against property showed a steady increase over the five-year period. The two other large categories of delinquency - incorrigibility and vagrancy, and immorality - fluctuated considerably over the five years under review. No particular trend can be depicted for them. Policy with regard to the referral of these two categories of delinquency to juvenile court varies considerably throughout the country.

39. The number of juveniles found delinquent by the courts in Canada has increased in each of the five years under consideration. This increase was greater, with the exception of all offences for 1959, than the increase in the juvenile population, ages 7-15, inclusive.

40. The largest proportion of delinquent acts in Canada consisted of offences against property. It would appear that offences against the person did not increase, certainly not at the same rate as offences against property. Delinquencies involving acts of violence were relatively infrequent. We were informed that gang delinquency is generally not a problem in the large urban areas of Canada.

41. It would appear that, so far as one can judge from statistical data of such a general nature, the problem of juvenile delinquency is more evident in Ontario and British Columbia. The rates for British Columbia are significantly higher than the rates for Canada and the other provinces, although there was a decrease in that province in 1961. We observe that it is difficult to draw conclusions concerning juvenile delinquency in the Province of Quebec because the Act is not in force throughout the entire province. Moreover, many cases involving delinquency appear to be dealt with in that province under the rather broad provisions of the provincial Youth Protection Act. (11).

42. Although rates are not available for comparison between urban and rural areas there is certainly more reported delinquency in urban areas. When making comparisons, however, between provinces or areas the possibility of rates or percentages being influenced by differences in policies between the areas should always be considered. The fact that services are more highly developed in one area than another may also be significant in producing variations in rates and percentages.

### Improvement of Statistics

43. The Dominion Bureau of Statistics should be encouraged to continue its efforts to integrate and improve the accuracy of its various statistical series on crime and delinquency. The eventual aim should be to develop statistics that will make it possible to produce data on the number of juveniles at any or all stages of the administrative process. Emphasis should also be placed upon developing rates for recidivism. This would give the authorities a more complete picture of the success of present treatment and after-care services.

### Causation

44. It is unfortunate that in Canada virtually nothing in the way of significant research has been undertaken into the causes or the characteristic features of delinquency that have application in the specific context of

Canadian conditions. Much has been written on the subject, in many countries, but it remains true that nowhere has a complete theory of causation been verified scientifically. In a Report of this nature it is not possible to deal briefly with all - or even fully with a few - of the many theories that have been advanced. We shall, however, set out briefly the theories that are generally regarded as having significance. In doing so our concern is not with facts that cause a child to commit some petty act that might, under the present law, nevertheless result in a finding that he is a delinquent. Instead we are concerned with the factors that cause a child to steal, commit an assault or, in effect, to do an act that, if done by an adult, would be regarded as a criminal offence.

### Theories of Causation

45. Whatever may be the private citizen's view concerning the causes of delinquency it is clear that there is no agreement among the professionals, and in many cases not even among the same class of professionals. In his 1951 study for the World Health Organization, Bovet observed: "The inquirer who seeks by reading or discussion to ascertain current opinions on juvenile delinquency must be struck by the following two facts: first, each point of view, whether calmly or forcibly expressed, is based on a deep-rooted conviction; and secondly, it is impossible to demonstrate objectively the validity of any one opinion." (12). Similarly, the authors of a more recent assessment of current mental health and social science knowledge about juvenile delinquency concluded:

"...A completed theory of the causes of delinquency does not exist. As a 'general' theory, quite possibly it never will, for the term delinquency covers such a multitude of disturbances that we dare not impute any common features to this collection in advance of a study of the data. And when the data are studied it becomes clear that there are many 'kinds' of delinquency, no matter whether the distinctions are made on the basis of kinds of act, seriousness of the act, implications for repetitions or for other acts, importance of the group in delinquency, family background and emotional development of the offender, or any other aspect chosen for study....

Theoretical accounts are usually addressed to a particular subset of delinquencies, even though this may not be made clear by the author of the account... There are differences in theoretical accounts of delinquency which are not now reconciled. This state of affairs is a source of challenge and stimulation to the scientist, since



systematic knowledge grows only by examination of facts that do not fit current theory. But the same state of affairs is confusing and perhaps discouraging to the layman who seriously wants to understand what the experts think about delinquency. . . . " (13).

46. Attempts to explain crime and delinquency are customarily divided into two principal classifications: theories that emphasize the individual characteristics of the offender and those that focus attention upon the environment. For convenience we quote the following concise statement of these differences of approach from a book by a leading English authority on criminology:

"....Explanations of the first type envisage the delinquent as an individual who is in some way more prone to delinquency than the non-delinquent, even in the same environment. When explanations account for this proneness they subdivide into two groups, those which attribute it to some inherited or at least congenital feature of the individual's constitution, and those which attribute it to some stage of his upbringing. Environmental explanations, on the other hand, place less emphasis on individual differences of disposition than on differences between the environments of the delinquent and the non-delinquent. Some such theories place the greatest weight on the non-human aspects of the environment, such as the economic climate; others on the human environment, in other words the associates, neighbours, and other acquaintances of the delinquent." (14).

47. The view that juvenile delinquency can be largely attributed to environmental factors finds its most prominent expression in the writings of sociologists. Early sociological studies, notably in the City of Chicago, observed a close relationship between high rates of delinquency and the zones of social deterioration in the inner-city, slum areas of large urban centres. These areas, often devoted to industry or entertainment, are characterized by poor housing and exploiting landlords, and sometimes also by the existence of organized crime. Studies of these "interstitial" or transition areas resulted in a number of findings that have been widely accepted as valid:- (a) that delinquency is heavily concentrated in deteriorated slums located in those portions of a city which were once residential but are changing to commercial and industrial districts; (b) that these areas retain their high delinquency rates in spite of population changes, including successions of various national descent or racial groups; (c) that as residents of these areas



move elsewhere, the delinquency rates of their children decrease; (d) that delinquents from these areas have higher recidivism rates than other delinquents, and that their age at first delinquency is ordinarily lower than the ages of first offenders in low-delinquency areas; and (e) that delinquency in such areas is usually group behaviour from the outset, and becomes group behaviour to an even greater extent, including participation in the activities of gangs, as youth becomes more advanced in delinquency.

48. In consequence of findings of this kind, sociologists came to doubt explanations of delinquency that rested on theories of constitutional defect or psychological malfunction. While the emphasis of individual writers differs, generally speaking the sociologist takes the view that most delinquent behaviour can be accounted for through the ordinary processes of social learning, or, in a broader sense, that it is in part a reflection of certain structural features of contemporary society that are conducive to the development of delinquency. A great deal of delinquent behaviour occurs, it is said, because of the normal tendency of children and young persons to imitate individuals or groups who serve as models for such behaviour. Some theorists have regarded delinquency as primarily a matter of "enculturation", envisaging the youth of the slums as learning criminal behaviour in much the same way as young persons in less disadvantaged areas learn more acceptable attitudes and ambitions. In particular, attention has focused on the so-called "delinquent subculture", a concept which, although variously interpreted, represents an attempt to explain the existence in these inner-city areas of powerful traditions in which delinquent and criminal behaviour is the approved way of life. Other theorists, conscious of the fact that conventional and anti-social values are both to be found in areas of high delinquency, have attempted to formulate an explanation of crime causation in terms of the various intimate personal and group associations to which a young person is exposed. On this view, criminal behaviour is seen as essentially the outcome of associations which in their frequency, duration, priority and intensity, preponderate more in favour of law violation than the reverse and provide the individual with the acquired techniques, attitudes and rationalizations that will support one or another kind of delinquent endeavour. Still other theorists, including those who have concerned themselves with "delinquent subculture" analysis, emphasize the gap that exists between the aspirations of young persons in the less privileged sectors of our society and the means that are realistically available to realize those aspirations. Our society, they point out, places an extremely high premium upon values such as competitiveness and material success, extolling such values through the school system, the communication media and otherwise. Unable for a number of reasons to compete effectively with children from the middle or upper class levels of society, the "lower-class" youth, it is suggested, is driven to obtain these culturally prescribed goals by illegitimate means, or alternatively, to recoup his loss of self-esteem by developing in combination with other status-deprived youth a set of values (e.g., "hanging around" instead of industriousness; aggressiveness instead of self-control) that constitute, in effect, an open rejection of conventional values. So conceived, much delinquent behaviour can be

regarded as socially induced, the result of pressures that are exerted, in the words of one writer, through "the composite emphasis of this uniform cultural value of success. . . . and the fact of a social organization which entails differentials in the availability of this goal." (15).

49. The principal alternative approach to the explanation of delinquency is to be found in the writings of psychiatrists and psychologists, who regard delinquent behaviour, broadly speaking, as indicative of some failure in the personal development of the individual offender. The psychiatrist and the psychologist, each from his own professional perspective, is concerned with the development of the whole personality of the child from birth to maturity. Delinquent behaviour is thought of generally as reflecting one or another form of personality disorder or social maladjustment, a condition which in turn is attributed, in large part, to disturbed personal relationships between individuals, particularly within the context of the family. Once again there are various interpretations of the way in which disturbances in the psychological development of the personality occur. One theory, proceeding on the assumption that all human behaviour originates in basic impulses that are essentially aggressive and antisocial in nature, holds that in the delinquent such drives are exceptionally strong, or that the customary agencies of control have failed adequately to assume the proper hold over conduct. Delinquent behaviour may thus be explained, for example, by a defect in or an arrest of the ego development of the child's personality which renders the child susceptible to antisocial influences in his environment. Another theory conceives of delinquency, not as a product of inborn impulses, but as a symptom of an underlying problem of adjustment. On this view, delinquency is regarded as an unfortunate outlet or mode adjustment seized upon by a child who has otherwise failed to cope with his own particular feelings of frustration, anxiety, conflict or guilt. A number of writers have placed special emphasis upon the harmful consequences for personality development of emotional disturbance experienced by a child during infancy, and in particular upon the effects of maternal deprivation in early childhood. Others have attempted to determine the relationship between delinquency and such factors as parental rejection, neglect, inconsistent and unpredictable discipline, and overstimulation amounting in some cases to a covert, even though unintended, collusion by the parent in the child's antisocial behaviour. That the understanding of delinquent behaviour provided by this kind of analysis of individual psychology is of considerable importance in the overall development of programs for the prevention and control of juvenile delinquency is not seriously doubted. As a complete explanation for crime and delinquency, however, theories based on conceptions of personality disturbance are commonly criticized on the ground that they do not adequately explain why there are a large number of delinquents who do not show any marked indication of mental illness, and why the great majority of delinquents come from the lower socio-economic sectors of our society.

50. Quite apart from the sociological and psychological factors that may be involved, there are those who hold the view that hereditary factors are of prime importance in the development of delinquency. More than half a century

ago the theory of the "born criminal" was popular among criminologists. The idea of a person being born with criminal tendencies fell into disfavour in later years, although today it seems to be recognized that hereditary factors do play an important part in the development of personality. Hereditary considerations, however, are thought to be only part of a number of factors that must be taken into account when one attempts to arrive at an explanation of delinquent behaviour. Under this view one does not speak of "inherited delinquency". It is said that what can be inherited is temperament and certain tendencies of character which, in a given set of circumstances, favour the later appearance of delinquent behaviour. There are two particular features of a biological or constitutional nature that have received some discussion in the literature. One is the fact that, however the findings are to be interpreted, there is a well-established relationship between certain kinds of juvenile delinquency and more muscular types of physique. A second, as explained in a World Health Organization publication, is the conclusion "that in many countries youths are reaching their maximum height at an earlier age and that lately the average age of puberty has been going down at the rate of about half a year every ten years." (16). The significance of this latter observation lies in the fact that, given the tendency in our society to treat young persons as psychologically immature to an ever increasing age, the effect is to create - with consequences that are not altogether clear - a widening gap between early physical maturity and a delayed psychological maturity.

51. The factor most frequently mentioned to us throughout the country is the importance of the role of the family in preventing delinquent behaviour. (17). The role of the family is under constant change and pressure. For example, the pluralism of value systems inherent in a democracy, the increasing geographic mobility of the population connected with the urbanization of Canada, and the trend towards impersonality resulting from urbanization all contribute to effect the quality of family life of the child. The forces of social change, it has been suggested, "can, through the medium of parents who are themselves intimidated by these changes, have direct effects on the basic security and growing awareness of the very young child." (18). Nevertheless, the precise ways in which poor family life contribute to delinquency has not as yet been determined. Certainly it is clear that not all children who experience an inadequate family life do, in fact, become delinquent. It is probably safe to assume, however, that factors that have harmful consequences for the family also tend to make many children more vulnerable to delinquency. Among the factors frequently cited are the following: - (a) the absence of one or both parents as a result of death, desertion, imprisonment or occupational necessity; (b) the incapacity of one or both parents because of physical illness, mental illness, alcoholism or unemployability; (c) material deprivation in the family because of unemployment, low income or poor management; and (d) emotional deprivation in the family because the child was not wanted, the parents are immature, there is a marital discord between the husband and wife, or the overcrowded conditions in the home result in a lack of privacy.

52. As will have become apparent, there are numerous social factors that



have implications for juvenile delinquency. We have previously noted, for example, the view that children become delinquent because they model their behaviour after delinquent adults. This does not mean, of necessity, that delinquency is the direct result of a child's imitation of a particular person. The growing child draws fragments of his model from various sources, that is, not only from individuals and groups with whom he is closely attached, but also from what he observes taking place in the community at large. Many persons have pointed to the prevalence in our society of values that tend to promote attitudes conducive to delinquency. It is said that as adults we are strongly individualistic and fiercely competitive, that we are childishly emulative and above all materialistic, and that these aspects of our social behaviour all stress, in their achievement, some disregard for the welfare and the rights of other persons.

53. We tend to become more and more a nation of transients and the continual movement of families from place to place can be especially difficult for growing children who must face a series of adjustments and readjustments. We are becoming more and more city dwellers rather than rural dwellers. We become more and more industrialized. The consequences of these broad social changes for childhood and adolescent development are difficult to assess. Illustrative of the kind of speculative comment to which this whole problem has given rise are the following observations contained in a study from which we have had occasion to quote before:

"The transitional aspects attendant upon mobility and urbanization lead to a number of broad effects. One is the absence of the informal system of social controls usually found in the settled community. The second effect is the growth of a complex system of interpersonal controls such as laws and regulations invoked only after transgressions have occurred but not designed to regulate social conditions so that the transgressions do not occur in the first place. A third effect of mobility and impersonality is a disproportionate emphasis on symbols of status which are highly visible, since they must be seen by (and appropriately interpreted by) communities who do not know the individual or his history personally. At the adult level, material possessions which are highly visible, such as automobiles, begin to serve this function. Similarly, this happens at the level of youth. Delinquencies involving the unauthorized use of automobiles have increased steadily...., and studies have shown correlations between interest in and possession of automobiles on the part of youth and academic retardation and failure....

Many of these alterations in value emphases in our culture, alterations of living patterns, the quality of change itself, seem to be funneling their effects directly into the structure



of.... families with an impact that has so far only been guessed at and not assessed." (19).

54. The mass communication media - television, radio, press and motion pictures - are often seized upon as important agents in promoting juvenile delinquency. Some persons are of the view that television, for example, may have some influence upon the way in which a young person commits an offence, or even upon his particular choice of offence, but that it has no effect in bringing a youth not already so predisposed to the state of mind whereby he decides to enter into a course of antisocial activity. Studies that have been undertaken into this question have found no scientific proof of any major or general influence of crime, violence and horror shows upon delinquent behaviour. At the same time, it is important to note that there is equally no proof that such programs do not have an influence of this kind. It is common knowledge how highly prized the television medium is by the advertiser concerned with the sale of his product, and by many teachers as an aid to the education of children. If television is effective for advertising and teaching purposes in relation to young persons it must seem indeed to be a paradox that the horror, crime and violence content should not have any significant effect upon the mind of the child at all.

55. Some observers think that a prominent cause of delinquency in the young stems from the emancipation of women. The issue of the "working mother" is one that has been much debated over the years. Studies of the negative effects of working mothers on their children are, it seems, far from conclusive. Many persons would argue that a more significant influence on the child occurs by reason of changes in parental functions and family relationships of a much more general nature, reflecting such factors as the increased economic independence of family members and the lack of quite so clear-cut a masculine role for a large number of fathers to assume in present-day society. One view forcibly expressed to the Committee is that to prolong discussion of the "working mother" as an explanation for delinquency only serves to hinder and delay consideration of questions of far greater importance relating to the provision of services to assist family adjustment and to ensure proper standards for the care of children.

56. Finally, in relation to the causes of juvenile delinquency, there are some who take the point of view that since the beginning of organized society the older generation has been critical of the behaviour of the younger generation. It is said that this chasm between the adult world and the youthful world is perennial and persisting and that although today in essence it is no different from what it has been in the past, nevertheless at the present time the chasm is much more sharply defined and much more in evidence than ever before. The authors of one study state the point in this way: "Present differences between youth and adult generations are considerable, for the younger generation must be constantly adapting to a new set of social conditions that the parental generation, in growing up, did not know, did not experience, and could not imagine....

Youth-adult misunderstandings and conflicts are found even in situations where cultural change is slow; but in social situations of rapid change they flourish and multiply, as the twentieth century scene so eloquently testifies." (20).

57. It is evident, then, that there is no simple or readily ascertainable explanation for the cause of juvenile delinquency. Indeed, the very concept of "cause" is one that is hotly debated by criminologists. We are told in the literature that delinquency must be regarded as a "multi-causal", or as a "bio-psycho-social" phenomenon. Or, we are told that the delinquent act must be viewed as "part of the total context in which all the infinity of variables in the particular case are involved", including "the individual with his physiological-constitutional base, his total personality and experience, his particular physiological and emotional-intellectual-temperamental state at the time of the act, and the situation complex to which he is responding...". (21). On this view, causes are seen as operating "not in isolation but in related interplay", so that any given influencing factor "may have very different significance in varied contexts because such influences are associated with diverse other variables that both take meaning from and give meaning to the particular cause involved." (22). Thus it seems to be generally recognized that sociological, psychological, hereditary and other factors all play their part in producing antisocial behaviour, but the importance or the weight that is to be attached to each in the overall assessment of juvenile delinquency is not as yet sufficiently understood.

#### Implications for Prevention

58. We consider problems of research, control and prevention later in this Report. At this stage we merely note that the inability of social scientists to pinpoint the causes of delinquency does not justify a failure on the part of society to act. In the analogous field of public health effective measures have frequently been taken to reduce the incidence of certain diseases before their causes were discovered.

#### Footnotes

1. "The clerk of every court or tribunal administering criminal justice, or in case of there being no clerk, the judge or other functionary presiding over such court or tribunal shall, at such times, in such manner and respecting such periods as the Minister may direct, fill in and transmit the schedules he receives relating to the criminal business transacted in such court or tribunal." Statistics Act, Revised Statutes of Canada 1952, c.257, s.28, as amended by Statutes of Canada 1952-53, c.18, s.14.
2. It will be noted, for example, that there is a marked increase in the

rate of recorded delinquency, both for all offences and for selected offences, in the Province of Saskatchewan for the year 1959, as compared with the years 1957 and 1958 (see Table 2(h)). We understand that this increase reflects principally a change of policy that was implemented in Saskatchewan in 1959. There is no reason to believe that these figures indicate a drastic increase in the incidence of juvenile delinquency for 1959 and subsequent years.

3. The Chief of Juvenile Delinquency Statistics of the United States Children's Bureau has observed: "If we think of as delinquent any misbehavior which might be dealt with under the law, whether detected or not, then undoubtedly a great many children escape the attention of law-enforcement or other child-caring agencies. While the exact number of undetected delinquents probably will never be known, several studies reveal that it is substantial . . . . Not only do such studies show that the number of hidden delinquents is great, but also reveal that the number of undetected delinquents is large among the middle - and higher - income groups - the groups which appear in strikingly small numbers in official statistics. Perlman, "Delinquency Prevention: The Size of the Problem," (1959) The Annals of the American Academy of Political and Social Science 1, at pp. 6-7. For examples of such studies, see Porterfield, Youth in Trouble (1946); Nye, Short and Olson, "Socio-Economic Status and Delinquent Behavior," (1958) 63 American Journal of Sociology 381.
4. To some extent these variations in practice are related to the philosophy of the juvenile court movement itself. The authors of one study have commented: "The comparability of official juvenile delinquency statistics from one jurisdiction to another suffers from a weakness inherent in the very concept of juvenile delinquency. This concept embodies a rehabilitative, clinical approach to the child which demands that each child be dealt with in a manner calculated to serve his best interests - regardless of the legal classification of his behavior. This means that the way in which a child enters into the juvenile delinquency statistics, or whether he enters at all, will vary according to his personality, family and neighbourhood relations, etc. - and according to the philosophy, personnel, facilities, and skills available in each court . . . .". Short and Nye, "Reported Behavior as a Criterion of Deviant Behavior," (1957) 5 Social Problems 207, at p.210.
5. In 1960, 436 boys were adjudged delinquent in Edmonton while only 85 were found delinquent in Calgary. This represented, on a very general calculation, a ratio of approximately 135 per one hundred thousand of population in Edmonton, as compared to 35 per one hundred thousand in Calgary. Even more striking is a comparison with



the City of Windsor, Ontario. In 1960, only 7 boys were adjudged delinquent in Windsor, representing a delinquency rate of only about 3.7 per one hundred thousand of population. To note still another example, the number of juveniles brought before the juvenile court in Toronto increased from 1,374 in 1959 to 2,085 in 1960. The number of children found delinquent for these two years was 856 and 1,520, respectively. The organization of a Youth Bureau within the Metropolitan Toronto Police Department occurred in 1960 and it would seem reasonable to conclude that much of the increase in reported delinquency for that year reflects changes in policies relating to law enforcement and court referral.

6. Juvenile Delinquents Act, Revised Statutes of Canada 1952, c. 160, s.2 (hereinafter cited as Juvenile Delinquents Act).
7. Whether or not court statistics are adequate to show general trends in juvenile delinquency is a matter that has been much debated. Frequently quoted is the statement of Witmer that "so frequent are the misdeeds of youth that even a moderate increase in the amount of attention paid to it by law enforcement authorities could create the semblance of a 'delinquency wave' without there being the slightest change in adolescent behavior. The same considerations throw doubt on the validity of court statistics as an index to change in amount of juvenile misconduct from time to time, for it is doubtful that such figures bear a consistent relationship to the ascertainable total." Witmer, in Murphy, Shirley and Witmer, "The Incidence of Hidden Delinquency," (1946) 16 American Journal of Orthopsychiatry 686, at p. 696. On the other hand, some take the view that the close correlation between the series of total offences known, total arrests and total court findings of delinquency are such as to make broad conclusions in regard to trends in juvenile delinquency justified. See, for example, Perlman, "Reporting Juvenile Delinquency," (1957) 3 National Probation and Parole Association Journal 242. Statistics of actual court appearances are, in any event, the only data available that is inclusive enough for general use - although we would add that several of the Briefs submitted to the Committee contained excellent statistical material, including data on informal dispositions, for a number of individual communities.
8. Concentration on offences of high reportability seems to offer the most hopeful basis for assessing changes and trends in juvenile delinquency on the strength of juvenile court statistics. Sellin has stated: "The difficulty with statistics drawn from later stages in the administrative process is that they may show changes or fluctuations which are not due to changes in criminality but to variations in the policies or the efficiency of administrative agencies ... These are the reasons why the records of 'crimes known' afford the best basis



for measurement, because they are closest to the actual offence involved, in terms of procedural time.... One qualification of this statement should be made. The higher up the scale of reportability an offence comes the greater is the possibility that crimes 'cleared' prosecuted or even resulting in convictions may serve for the purpose....". Sellin, "The Significance of Records of Crime," (1951) 67 Law Quarterly Review 489, at pp. 497-498. There is, in addition, another advantage in concentrating upon offences of the kind selected. It takes into account an assumption, which we think to be valid, that essentially "the community is interested, for measuring purposes, in serious delinquent events rather than symptomatic or predelinquent behavior." Sellin and Wolfgang, The Measurement of Delinquency (1964), p. 115.

9. The totals shown on these charts do not correspond to the totals published in the annual Juvenile Delinquents series issued by the Dominion Bureau of Statistics. In the tables prepared for the Committee there are no duplications. These tables deal with persons, and thus indicate the number of children found delinquent in a given year. The totals published by the Dominion Bureau of Statistics are based upon court appearances, so that some children are listed more than once. However, the data prepared on the Youthful Offender (para. 32 et. seq.) is comparable to the data in the annual series Statistics of Criminal and other Offences.
10. One possible avenue for further research is suggested in a study prepared for the United States Congress by the National Institute of Mental Health. The authors observe: "Studies of the incidence of 'hidden delinquency' document the fact that delinquency in the non-apprehended population at large is extensive and variable.... Social factors may help to select subgroups at each stage in the progression toward an official statistic: observation of deviant misbehavior, report of the apprehension, police action upon the report, booking versus 'informal' disposition, etc.... It has been argued that variations over time may reflect changes in the tolerance level in the community as well as changes in actual rates.... A full understanding of delinquency will eventually require consideration of the factors making for the variations in reporting.... The very factors which are cited as preventing an accurate estimate of the incidence of delinquency are themselves of interest and are subject to analysis. The inconsistencies with respect to different judges, courts, types of offence, ethnic origin of offender, etc., are in fact the very consistencies of differences in social status, tolerance levels of different communities, differences in visibility, differences in anxiety concerning social sanctions, etc.... Current and future research may give us an eventual account of the determinants in individuals and communities of sensitivity to different types of norm violations."

Cook and Rubinfeld, An Assessment of Current Mental Health and Social Science Knowledge Concerning Juvenile Delinquency (National Institute of Mental Health, 1960), c.11, pp. 3-4.

11. Youth Protection Act, Statutes of Quebec 1950, c.11, ss. 15-18, as amended by Statutes of Quebec 1950-51, c.56 and Statutes of Quebec 1959-60, c.42.
12. Bovet, Psychiatric Aspects of Juvenile Delinquency (World Health Organization, 1951), pp. 10-11.
13. Cook and Rubinfeld, op. cit. supra note 10, c.11, pp.2-3
14. Walker, Crime and Punishment in Britain (1965), p.44.
15. Merton, in New Perspectives for Research on Juvenile Delinquency (Witmer and Kotinsky ed., 1955), p.30.
16. Gibbens, Trends in Juvenile Delinquency (World Health Organization, 1961), p.19.
17. Thus one author observes: "Juvenile delinquency is more than a formal breach of the conventions; it is indicative of an acute breakdown in the normal functions of family life. The loss of parental control represented in the formal breach of the law is usually the culmination of a period of heightened tensions arising from severe conflict over patterns of rearing - disagreement over duties, restrictions and limitations, standards of education, and so forth - culminating in a breakdown of emotional attachment between parent and delinquent child, and leading often to a break in essential communication of attitudes between the generations. Shulman, "The Family and Juvenile Delinquency," in The Problem of Delinquency (Glueck ed., 1959), p. 128.
18. Cook and Rubinfeld, op. cit. supra note 10, c.11, p.27.
19. Id., at c.11, p.7.
20. Kvaraceus and Miller, Delinquent Behavior: Culture and the Individual (National Education Association Juvenile Delinquency Project, vol. 1, 1959), p.25.
21. Tappan, Crime, Justice and Correction (1960), p. 70.
22. Id., at p.71.



## CHAPTER III

### THE COMMITTEE'S APPROACH TO THE PROBLEM

59. Juvenile delinquency is one of the most distressing – and therefore one of the most important – social problems of our time. It affects gravely the children who are found to be delinquent, their families and the state which in the end bears the cost. (1). A problem of this gravity requires the sincere and active co-operation of all levels of government, whether federal, provincial or municipal. Sincere and active co-operation will inevitably involve the expenditure of money.

60. Our terms of reference require us to respect the federal nature of our constitutional system. We have sought to keep this obligation in mind when making our recommendations. In discussing aspects of the subject that are under provincial jurisdiction we have found it necessary at times to comment adversely upon certain practices and facilities. Our criticisms are certainly not intended to reflect adversely upon the many dedicated persons working in the juvenile delinquency field under provincial or municipal auspices.

61. Perhaps the very first question to be resolved is whether the national government has any role at all to play in relation to juvenile delinquency. For example, if the idea that delinquency is a welfare problem is carried to its logical conclusion, Parliament would lack constitutional power to enter the field. But it seems to us that delinquency, properly understood, is a welfare problem in the sense that adult crime is. The national government would be abdicating its constitutional responsibilities if it permitted delinquency to be defined and dealt with exclusively by the individual provinces under child welfare legislation. Such an abdication might very well be lawful as a matter of constitutional law. (2). For example, Parliament might declare certain conduct criminal only if committed by persons over a defined age, thus allowing the provinces to legislate from a "non-criminal" aspect in relation to persons under that age. (3). However, this would result in the loss of the value of a national approach. It is reasonably to be expected that, in the Canada of today, with its tremendous internal migration, the effect of multifarious delinquency legislation and programs would be to produce a kind of social chaos, at least in the juvenile field, throughout the country. Whatever may be the constitutional position, a fifteen-year-old boy who kills or steals is considered by the community to be a wrongdoer. Seemingly one of the reasons for the allocation of the criminal law power to Parliament was to ensure approximate uniformity of legal sanctions against conduct that was uniformly prohibited. The benefits of this uniformity – evident to anyone who is familiar with other systems – would be lost if delinquency were to be considered a matter for provincial jurisdiction.



62. Our starting point, then, is the view that juvenile delinquency legislation is the counterpart of ordinary criminal legislation modified for a specialized group defined by age. In taking this position we none the less accept the view that criminal legislation not only can have, but must have, a social purpose. From the assumption that juvenile delinquency legislation is the counterpart of ordinary criminal legislation flow two important consequences: (a) there should be uniformity in coverage; and (b) there should be uniformity, that is, equality of services throughout Canada.

63. The purpose in allocating the power to enact criminal law to the exclusive jurisdiction of Parliament under the British North America Act is presumably to ensure that a person may act in the knowledge that if his conduct is legal in one part of Canada it is legal everywhere in Canada; and that if his conduct is illegal the maximum power of the courts to punish him is uniform throughout the country. (4). In this respect no adequate reason has been advanced for treating Canadian children as second-class citizens.

64. In the realm of adult crime the federal government has recognized its obligation to provide equality of services - at least in the case of persons sentenced to penitentiary. Thus an adult sent to a federal prison in one part of Canada receives the same treatment as a similar adult sent to another penitentiary in a different part of the country. In other words, the quantity and quality of accommodation and training received by the inmate is not affected by the wealth or poverty of the province from which he comes. It is true that there is inequality of such services in the case of persons sentenced to provincial prison or reformatory terms. However, this inequality is the result of the constitutional provisions that allocate legislative power in relation to prisons and reformatories to the provinces. (5). At the present time children are treated differently. The treatment and services accorded children adjudged delinquent under the federal statute are provided entirely by provincial authorities. The degree of prosperity and social conscience of the province in which they live usually determines the adequacy of the treatment they receive. We are not aware of any sound reason to support such discrimination.

#### Footnotes

1. Some indication of the potential cost of juvenile delinquency is provided in a submission presented to the Committee in the City of Hamilton. After a study of an actual case history, a committee of the Social Planning Council in Hamilton concluded that the cost of maintaining the offender in a training school for one year as a juvenile delinquent, and in jails and penitentiaries for thirteen years as an adult, was \$17,617. This figure represents a minimum estimate. It does not take into account the court costs incurred in registering some

twenty-two convictions, the expenses of numerous police investigations, the losses suffered by individual witnesses, loss of earning power of the convicted person, and other indirect costs. See Brief submitted by the Juvenile Delinquency Study Committee of the Social Planning Council of Hamilton and District (1962), pp. 8-9. These costs to society are such as to invite obvious questions concerning the effectiveness of our present allocation of resources through existing programs of delinquency prevention and control. In this connection, see infra Chapter XII

2. Cf. , O'Grady v. Sparling, (1960) S.C.R. 804.
3. This is, in fact, what Parliament has done in so far as offenders under the age of seven years are concerned. See infra para. 90. See also section 39 of the Act, which provides that in appropriate cases children charged with less serious offences may be dealt with under provincial legislation.
4. In the course of the debates on Confederation, John A. Macdonald, Attorney General for Canada West, stated: "It is of great importance. . . .that what is a crime in one part of the British America should be a crime in every part. . . .It is one of the defects in the United States system. . . .that what may be a capital offence in one state may be a menial offence, punishable slightly in another. But under our Constitution we shall have one body of criminal law. . . .operating equally throughout British America. . . .I think this is one of the most marked instances in which we take advantage of the experience derived from our observations of the defects in the constitution of the neighbouring Republic". Parliamentary Debates on Confederation of British North American Provinces, 3rd. Sess. Provincial Parliament of Canada, Quebec 1865 (Ottawa, 1951).
5. British North America Act, 1867, 30-31 Vict., c.3, s.92(6).



## CHAPTER 1V

## THE FRAMEWORK

Constitutional

65. Under the Canadian legal system no level of government – national, provincial or municipal – can lawfully control human behaviour unless it has been given the power to do so by our basic constitutional document, the British North America Act. We are concerned only with the powers of either the federal government or the provincial governments to control delinquency legally.

66. The British North American Act allocates exclusive legislative power in relation to criminal law to the federal Parliament. (1). This means that as a general rule only Parliament can declare that any given form of conduct is criminal. In this respect the Canadian system is unlike that, for example, of either the United States or Australia. The provincial legislatures have exclusive legislative power in relation to the administration of justice within the province, civil rights within the province and all matters of a purely local or private nature. (2). Furthermore, although the criminal law power is allocated to Parliament, the provincial legislatures authorize penalties to enforce legislation in any field in which they have constitutional power. (3). Thus, for example, the provincial legislature can make punishable the failure of a person to carry current licence plates on his automobile.

67. The result of this constitutional allocation of power is a division of responsibility in relation to the problem of delinquency. Parliament has the constitutional power to define delinquency and to declare what the consequences may be where a juvenile is found to be delinquent. However, the administration of justice, including the police and the juvenile courts, is a provincial responsibility. Above all, the preventive agencies of the home, school, church and recreational facilities, as well as the general social services, are subject to the legal control of provincial legislatures. We emphasize the importance of this division of responsibility because the remedy for the defects and the deficiencies outlined in many sections of our Report will require what has been called "co-operative federalism" of the highest order before a solution will be found. For this reason we recommend that one or more conferences be called by the Government of Canada to which should be invited representatives of the major agencies concerned with the administration of justice and with the welfare of children. What we envisage are conferences or meetings of persons responsible for carrying out active programs of a public or quasi-public nature, called for the purpose of discussing specific programs and specific changes in the law.



## The Juvenile Delinquents Act

68. In 1893 the Ontario legislature passed the Children's Protection Act. (4). This Act provided specialized measures in relation to children who violated provincial statutes. It was inadequate in that it did not cover the more common cases of children who violated federal laws and, more specifically, the Criminal Code. To remedy the defect, Parliament in 1894 enacted a statute (An Act Respecting Arrest, Trial and Imprisonment of Youthful Offenders, 57-58 Vict. c.58) which declared that trials of offenders under sixteen years of age were to be private and that these offenders, prior to trial, were to be detained separately from adults. The federal legislation was traditional in its approach in the sense that it merely provided a specialized procedure for a specialized age group. The first American delinquency statute of Illinois (1899) and Colorado departed from the traditional pattern. When Canada's statute of 1894 was being re-examined the Illinois and Colorado statutes were important influences in the drafting of the legislation that became the Juvenile Delinquents Act of 1908. (5). The pattern of the Act (which was substantially revised in 1929) shows the American influence. In the American constitutional system - unlike the Canadian - the individual states have power to enact both welfare and criminal legislation. Thus the original Illinois statute was able to treat (and present American delinquency legislation generally continues to treat) acts of delinquency as non-criminal matters. The state purports to act as "*parens patriae*" (6). In accordance with the chancery characterization of the matter the proceedings are instituted by petition instead of by information or indictment as in criminal actions. Because the state was viewed as acting as a wise and kindly parent, delinquency was defined to encompass not only traditional criminal conduct on the part of the child but also behaviour which indicated the need for society's intervention in order to prevent later criminal acts when he became an adult.

69. The nature of the Canadian constitutional system proved to be too great an obstacle for the draftsman of the Canadian Act to make the Act a complete copy of the Illinois statute. Clearly the "*parens patriae*" of children in any province is the Crown in right of that province and not the Crown in right of the federal government. Moreover, Parliament lacks the power to enact legislation in relation to welfare matters, and is thereby precluded from taking a non-criminal approach to delinquency.

70. The result, then, is the present pattern of the Act. Conduct that would be criminal under the ordinary law, as well as much that would not, is considered to be an act of delinquency. None the less the Act directs the juvenile court to apply a non-punitive philosophy. Thus, one key section (section 38) declares: "This Act shall be liberally construed to the end that its purpose may be carried out, namely, that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should

be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance."

71. In paragraph 66 we referred to the consequences of the division of power between the federal government and the provinces over the legal control of delinquency. The Act, although enacted by Parliament, depends upon provincial resources for its effective application. Generally speaking, the Act is only brought into force upon request of the province and applies only in those areas where the provincial government wants it to operate. (7). That is to say, the Act does not have universal application in Canada and, in some cases, not even throughout the province. In this respect it is unlike the usual federal statute such as the Criminal Code. Furthermore, the juvenile court judges who apply the Act are provincial appointees paid by the province or by the province in conjunction with the municipality which the court serves. The facilities upon which the court relies - diagnostic services, child welfare services, probation services and various types of institutions for children (whether operated by private or public agencies) are subject to provincial control and are usually financed, either in whole or in part, by the province. Certainly the federal government, under the present state of the law, has no jurisdiction to interfere in any of these vital matters involved in the administration of the Act.

72. The resources of the juvenile court are discussed in detail later in this Report. At this point it is sufficient to note that there is a wide variation in the availability of services and facilities across the country. It can be stated with confidence, however, that no province has available a sufficient quantity or quality of needed services. The problem appears to be either an inadequate number of skilled personnel or a lack of financial resources in the service agencies because of the policies of various levels of government.

73. If the powers of the court upon making a finding of delinquency were somewhat limited, perhaps the nature and quality of the facilities and services available to it would not be of very great importance. However, the powers of the court are very wide. They include: suspending final disposition, adjourning "sine die", imposing a small fine or conditions of probation, placing the child in a foster home, and committing the child to a children's aid society or an industrial or training school. (8). These powers can be used singly or in combination. Such powers obviously require great resources if they are to be implemented effectively.

#### Provincial Control of Juvenile Anti-social Behaviour

74. In most provinces there are two statutes that in part are concerned with anti-social conduct on the part of juveniles. For example, one provincial child welfare act defines a neglected child, among other things, as one who

is "found associating with an unfit or improper person .... (or) .... begging .... or loitering in a public place .... in the evening .... (or) .... who, with the consent and connivance of the person in whose charge he is, commits any act that renders him liable to a penalty under any Act of the Parliament of Canada or of the Legislature or under any municipal by-law .... (or) .. .. who is delinquent or incorrigible by reason of the inadequacy of the control exercised by the person in whose charge he is .... (or) .... who without sufficient cause habitually absents himself from his home or school ...."(9). Depending upon the province concerned, the court can order a child who is found to be neglected to be returned to his parent or guardian subject to supervision by a children's aid society or by the provincial officer responsible for child welfare services, or can order the child committed either temporarily or permanently into the care of such a society or of such officer. In most provinces - but not in all - provincial legislation relating to the specific problem of "neglect" does not authorize committal of such children to an industrial or training school. (10).

75. The other provincial statute that is relevant in this context is the statute relating to the administration of industrial or training schools. In some provinces a child can be sent to the industrial or training school for such conduct as begging, truancy, being "accused or found guilty of petty crime", unmanageability, incorrigibility, "being in moral danger", or having been convicted of an offence punishable by imprisonment under any Act or law in force in the province. (11).

76. This power to use one of several statutes, whether federal or provincial, in handling a child raises problems which we examine in due course.

### Financing Child Welfare Services

77. The financing of provincial child welfare services is extremely complicated. The basic system in most provinces is one of primary responsibility on the municipality to which the child belongs coupled with a system of provincial government grants. This system is slightly modified in the case of training schools. Public training schools are usually financed by the provincial government. The government usually retains the right to recoup, from the municipality to which a child belongs, part of the expense of maintaining the child in the school. Private societies that operate training schools usually receive a provincial grant covering part of the expense of maintaining children in their institutions.

### Footnotes

1. British North America Act, 1867, 30-31 Vict., c.3, s.91(27).
2. British North America Act, 1867, 30-31 Vict., c.3, ss.92(14), (13) and (16) respectively.



3. British North America Act, 1867, 30-31 Vict., c.3, s.92(15).
4. An Act for the Prevention of Cruelty to, and Better Protection of Children 1893 (Ont.), 56 Vict., c.45.
5. For a short account of the legislative history of the Juvenile Delinquents Act, see Scott, The Juvenile Court in Law (4th ed., 1952), pp. 1-3.
6. For a further discussion of the implications of the "parens patriae" concept, see infra paras. 137-141 and 147-148.
7. Juvenile Delinquents Act, ss. 42 and 43. See generally Scott, op. cit. supra note 5, pp. 30-33.
8. Juvenile Delinquents Act, s.20(1).
9. The Child Welfare Act, Revised Statutes of Ontario 1960, c.53, s.11(1)(e).
10. See Protection of Children Act, Revised Statutes of British Columbia 1960, c.303, ss.7 and 8; The Child Welfare Act, Revised Statutes of Alberta 1955, c.39, ss.9(i), 14 and 14a, as amended; The Child Welfare Act, Revised Statutes of Saskatchewan 1953, c.239, ss.2(11a) and (15), 4, 5a, 5b, 13, 19 and 30, as amended; The Child Welfare Act, Revised Statutes of Manitoba 1954, c.35, ss.19, 24 and 25, as amended; The Child Welfare Act, Revised Statutes of Ontario 1960, c.53, ss.11(1)(e) and 17, as amended; Youth Protection Act, Statutes of Quebec 1950, c.11, ss.15, 15a and 17 as amended by Statutes of Quebec 1950-51, c.56 and Statutes of Quebec 1959-60, c.42; Children's Protection Act, Statutes of New Brunswick 1957, c.6, ss.1(j), 7, 10, 11 and 16, as amended; Child Welfare Act, Revised Statutes of Nova Scotia 1954, c.30, ss.1(h), 28, 42 and 48, as amended; The Children's Protection Act, Prince Edward Island Revised Statutes 1951, c.24, ss.1(i) and 10; Child Welfare Act, 1964, Statutes of Newfoundland 1964, c.45, ss.2(m) and 15.
11. See, for example, Training-schools Act, Statutes of British Columbia 1963, c.50; Industrial and Correctional Homes Act, Revised Statutes of Manitoba 1954, c.124; Training Schools Act, 1965, Statutes of Ontario 1965, c.132; Youth Protection Act, Statutes of Quebec 1950, c.11, as amended by Statutes of Quebec 1950-51, c.56 and Statutes of Quebec 1959-60, c.42; Training School Act, Statutes of New Brunswick 1961-62, c.33. In some provinces the provisions



relating to training school admissions are contained in the child welfare statute. See, for example, The Child Welfare Act, Revised Statutes of Saskatchewan 1953, c.239; The Welfare of Children Act, Revised Statutes of Newfoundland 1952, c.60, and Child Welfare Act, 1964, Statutes of Newfoundland 1964, c.45.

## CHAPTER V

### THE JUVENILE DELINQUENTS ACT

78. In Chapter IV we sketched briefly the background of the Act, its pattern and the resources of the court in applying it. In this Chapter we examine issues that have arisen in the operation of the Act and recommendations for their solution that have been suggested. At this stage it is important to note that the issues are inextricably interrelated. The consequence is that adoption of an approach to one problem inevitably affects the solution of others. The problems we examine in this Chapter are: (a) geographical scope, (b) nomenclature, (c) jurisdiction of the courts, and (d) powers of disposition. Other issues, for example, the denial of publicity in juvenile court proceedings and the role of counsel, are discussed in Chapter VIII.

#### Geographical Scope

79. The Act may be put in force throughout the entirety of a province only where the province has enacted legislation establishing a system of juvenile courts and detention homes. (1). This has been done in the majority of provinces. Alternatively, provision exists for bringing the Act into force in an individual city or town, or other portion of a province. (2). In a few provinces, as well as in the Yukon Territory and the Northwest Territories, it is the latter situation that obtains. In any event the Act is now in force in all of the major metropolitan areas of Canada. It is not in force in Newfoundland because of the terms of union between Canada and Newfoundland. (3). The present piecemeal system was adopted in 1908, presumably because there was a shortage of facilities and personnel and it was thought that a gradual introduction of the Act would be more practicable than its immediate universal application. (4). This system was retained when the Act was revised in 1929. In our survey those organizations that considered the matter recommended that the Act should be in force throughout Canada. There is a shortage of facilities and personnel now, as there was in 1929 and, if a pessimistic view is taken, as perhaps there will be in 1999. Nevertheless the Act is now in force in those areas where the great majority of the Canadian population lives. To extend the operation of the Act to all parts of the country would not, it seems to us, impose any undue burden or, at any rate, a burden that should not be gladly borne by those responsible. (5).

80. One of the basic premises upon which the Committee has worked is that the Act, as a federal statute, should operate equally throughout Canada. If the Act is truly beneficial it should be available for the benefit of all Canadian children, and not merely those who live in the wealthier areas of our country. The problem of court services in outlying areas could be met by the introduction generally of a system in use in one Canadian province and in several of the states of the United States - that of the circuit court. This

would not, we think, impose any great financial burden upon the provinces. However, the establishment of proper detention facilities and other ancillary services to the juvenile court in sparsely populated areas might well be expensive. If this were so it would raise the question as to the extent to which Parliament would be prepared to grant subsidies to achieve the desired goal.

### Nomenclature

81. The present statute is entitled the "Juvenile Delinquents Act". It establishes the powers of a court in relation to a group of persons whose acts constitute the offence of delinquency. A young person who commits an act of delinquency is characterized as a juvenile delinquent. A recommendation that was urged repeatedly upon the Committee is that the term "juvenile delinquent" should be abandoned for purposes of legal characterization. It is possible, we think, to identify three principal reasons why a change in the law might be considered desirable. The three should by no means be thought of as representing isolated questions. As an analytical matter it is useful to deal with them separately. What we are in fact confronted with, however, is the cumulative effect of difficulties, terminological and other, inherent in the concept of the "juvenile delinquent" as a legal category. We return to this problem again in the context of our discussion of offence jurisdiction later in this Chapter.

82. Most of those who have addressed themselves to the matter of terminology have been concerned with the problem of stigma. What is in issue are the possible effects of what is called "labelling". "To a child and his family," the Ontario Probation Officers' Association suggests, "there is a vast difference between telling him that he has 'committed a delinquency' and telling him that he is a 'juvenile delinquent'." (6). In large part, the difference reflects the overlay of emotion that the term "juvenile delinquent" seems clearly to have acquired in contemporary usage. One private correspondent, for example, told how, in the case of a boy charged with the relatively minor offence of discharging a rifle in violation of a municipal by-law, "the mother nearly went out of her mind and the father was terribly upset by the fact that their son would be classified as a juvenile delinquent." Not infrequently, we have been informed, lesser offences committed by juveniles are not prosecuted at all because there is a reluctance on the part of the police, the courts and other authorities to have to charge and brand a child as a juvenile delinquent in order to enforce the law. Still other implications of "labelling" have been suggested. One has to do with what has been called "position assignment" - the fact, as explained in one submission, "that once assigned to a particular position and given a particular label, the individual tends to conform to the expectations associated with the label and in turn other people respond to him on that basis, re-enforcing the assignment." (7). To call a young person a "juvenile delinquent", in other words, is to generate pressures that push the offender further in the direction of anti-social behaviour.



The John Howard Society of British Columbia draws attention to another aspect of the "labelling" problem:

" It has been long suspected, and has now been established by a Ford Foundation study, that the term .... ('juvenile delinquent') .... has a positive rather than a negative association for many of those who qualify for it: that they wear it, not as a derogatory label, but as a badge of merit. Most human beings have a need to be significant in the eyes of others. The juvenile delinquent often having failed to achieve such significance in socially acceptable ways finds great consolation in the recognition he achieves as an anti-social category. The category ' juvenile delinquent' has been accorded such wide and prolonged attention in all our communication media, that even healthy, socially-well adjusted youngsters experience degrees of flirtation with it ..... We do not feel we over-estimate the importance of titles by suggesting that this most confused term should be replaced by others which are more clearly associated with their exact meaning. A special effort should be made to find terms which do not lend themselves to such glamorization." (8).

83. That changes in terminology can serve to combat the harmful effects of stigma has been doubted by commentators on juvenile court legislation. (9). Some have emphasized that stigma attaches to a juvenile court appearance primarily because the proceeding represents a formal response to anti-social conduct - conduct of a kind that is usually sufficient to arouse intense feelings in a community - of a member of an age group to which the general population reacts with ambiguity. Any new designation, it has been said, "can become as infamous as 'delinquent', a term that was itself, after all, designed to protect against the stigma of 'criminal'." (10). The fear has been expressed also that, in concerning ourselves with matters of terminology, false cures may be adopted for real problems. These are cogent criticisms. Nevertheless, we find the arguments in favour of abandoning the existing terminology even more compelling. We consider now some of the other difficulties that the term 'juvenile delinquent' presents.

84. A second reason why a change in the law may be regarded as desirable concerns the fact that the term "juvenile delinquent" tends to be given a descriptive meaning in the literature of the medical and behavioural sciences. In consequence of this, an element of confusion is introduced into public discussion of the problem of juvenile delinquency. "There is general

agreement among psychiatrists, "the authors of an American study have observed, "that, diagnostically speaking the youngster who violates norms can fall into any diagnostic category or into none at all and that there is no diagnostic category of 'delinquent' for youngsters who engage in or repeat illegal behavior." (11). To quote from one submission received by the Committee, delinquency as defined in the Juvenile Delinquents Act "is an entity only in the legal sense", and "is not an entity in a medical or behavioral sense." (12). Nevertheless, when behavioural scientists use the term "juvenile delinquent" they ordinarily consider that they are using it descriptively - that is, that they are saying something about the offender, rather than the offence. Generally speaking, the delinquent act is considered to have importance primarily as a symptom of some more basic underlying difficulty. In one of the classic studies of juvenile delinquency, for example, Aichhorn states that we should "regard truancy, vagrancy, stealing, and the like as symptoms of delinquency, just as fever, inflammation, and pain are symptoms of disease." (13). This other way of looking at delinquency is reflected in the assertion - and it is not untypical - made in another submission that "the precise definition of delinquency as seen by the lawyer is not acceptable to the psychiatrist, psychologist, or the social worker." (14). Clearly, the term "juvenile delinquent" has come to have different meanings for different people. That this can contribute to a breakdown in communication was evident to the Committee from its many discussions across Canada.

85. It may be useful to indicate briefly the way in which this confusion in usage is manifested. There is a tendency, when one conceives of the delinquent act essentially as a symptom and seeks to look behind it with a view to understanding or treating the underlying problems that give rise to overt anti-social behaviour, to think of delinquency in terms only of those specific behavioural problems with which one is concerned. Children with serious behavioural problems come to be regarded as "delinquent" regardless of whether or not they have been adjudged so by a court - and sometimes even in the absence of an act for which they could be adjudged delinquent. The word "pre-delinquent" might be noted in this connection, since it seems to represent in part an attempt to bridge the gap between the behavioural scientist's and the lawyer's use of the term "juvenile delinquent". Similarly, when a child engages in prohibited behaviour of a kind that is of little consequence from a treatment point of view he is considered not really to be delinquent at all, even though he may have acted in violation of the law. As one organization relates, "it is not uncommon for youths who are not truly delinquent to be judged as delinquent simply because, in the course of their role experimentation, they have committed delinquent acts" (15). From a legal point of view the focus is necessarily on specific conduct that can support a finding that a youth is delinquent, in accordance with the provisions of the Act defining the basis of juvenile court jurisdiction. Thus the rather different functions and perspectives of the law and of medical and behavioural science have made "juvenile delinquent" a term of ambiguous

reference. Public understanding of the problem of juvenile delinquency, and to some extent the administration of the law itself, have, in our view, suffered from the confusion that has been engendered.

86. There is a third objection to the term "juvenile delinquent". This is the fact that the words carry with them the suggestion of a course of conduct, or a delinquent pattern of behaviour. A brief prepared by the Canadian Corrections Association states the difficulty in this way:

" Delinquency is defined as far as possible as a state or condition, so that the child is looked upon as having a tendency to anti-social behaviour, rather than as having committed one undesirable act. Perhaps some children may properly be so classified, but many of those declared delinquent, particularly those who have committed only a minor or isolated offence, show no such habit pattern." (16).

87. It is possible to argue that the term "juvenile delinquent" need not be regarded as implying a "habit pattern" at all, and that essentially the words are a kind of legal shorthand designed to direct the attention of the juvenile court judge, at the disposition stage, beyond the specific conduct that has brought the child before the court to the underlying personality factors that may have influenced the child's behaviour. So conceived, the characterization represents no more than the manner in which the basic principle of the Act - that a child should "be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance" (17) - is given legislative expression. Nevertheless, it does seem apparent that a declaration that a child is a "juvenile delinquent" tends to suggest that persistent misconduct or a continuing disturbance has been demonstrated. To this extent the language of the Act is confusing. There is reason to believe that this confusion has led to some uncertainty as to the proper function of the juvenile court. Two potential dangers might be noted. One is that the objective of the juvenile court's intervention may be distorted - that, in the words of a submission by the Ontario Welfare Council, the child may be "pre-judged by title." (18). The other is akin to the problem traditionally presented by the concept of vagrancy. This is the danger that the inquiry will focus, at the adjudication stage, upon the kind of person that the alleged offender is, rather than upon the specific act that he is said to have done. (19). The broad manner in which the offence of delinquency is defined under the Act, together with the emphasis on "need" that appears in section 38, lends itself to this approach. We deal with this point again in the context of our discussion of offence jurisdiction in this Chapter. It is sufficient to say here that we regard this danger in particular as a real one.



88. We think that the term "juvenile delinquent" should be abandoned as a form of legal designation. The confusion to which it has given rise would not, in our view, attach inevitably to any alternative language that might be employed. We feel that the confusion results in large part from the peculiar nature of the concept itself. Specifically, we propose that the terms "child offender" and "young offender" be adopted - although for a limited purpose only. These terms are discussed in more detail later in the Report. (20). We recommend also that the name of the statute be changed to the more neutral title, the "Children and Young Persons Act". We would emphasize that it is not our intention to suggest that this change of terminology represents a solution to the problem of stigma. That problem must be attacked on a number of fronts. It can be offset to some extent by an adequate intake procedure designed to adjust or screen out appropriate cases before a hearing. (21). Similarly, the disposition provisions of the statute can be structured so as to avoid the unnecessary attribution of stigma. (22). Controls on publicity and the use of juvenile court records have a bearing as well. (23). Undoubtedly an element of stigma will continue to accompany an appearance in juvenile court, regardless of any change in descriptive language that is made. It is perhaps not unreasonable to hope, however, that terminology less open to confusion, or burdened by acquired meanings, will not attract quite the same degree of stigma as has come to be associated with the words "juvenile delinquent".

### Jurisdiction Generally

89. There is not one issue of jurisdiction of the juvenile court but many issues: (a) what should be the minimum age of the child before the juvenile court has power to hear the proceedings?; (b) what should be the maximum age of the child over whom the juvenile court has jurisdiction?; (c) should these age limits be uniform throughout Canada?; (d) in respect of what types of conduct by persons within the statutory age group should the appropriate authorities be authorized or required to intervene under the Act?; and (e) are there situations in which a child should be tried not in the juvenile court but in the ordinary adult court?

### Minimum Age Jurisdiction

90. At common law and under the Criminal Code (section 12) a child under the age of seven years is not criminally responsible for his conduct. The Juvenile Delinquents Act does not specifically establish a minimum age limit for juvenile court jurisdiction. In section 2 (1) (a) it defines a child as "any boy or girl apparently or actually under the age of sixteen years ....". Under the Act, however, a "delinquency" is an "offence" (section 3). The Criminal Code provides, in section 12, that "No person shall be convicted of an offence ... while he was under the age of seven years." Moreover, section 7 (2) of the Criminal Code declares that "every rule and principle of the common law that renders any circumstance a justification or excuse



for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this Act or any other Act of the Parliament of Canada, except in so far as they are altered by or are inconsistent with this Act or any other Act of the Parliament of Canada." We see no inconsistency between this statutory and common law exemption from criminal responsibility and the Juvenile Delinquents Act. It is true that some juvenile courts, purporting to rely upon section 38 of the Act, have found children under the age of seven years to be delinquent. For reasons outlined in subsequent paragraphs we think that their action was socially unsound and that, in any event, it was illegal.

91. Almost all interested organizations have recommended that the minimum age of criminal responsibility – that is, the minimum age for juvenile court jurisdiction under the Act – be raised. However, there is a wide variation in the minimum age suggested. The proposals range from eight at the lowest to thirteen at the highest. In the following paragraphs we examine the more important reasons advanced in favour of raising the minimum age limit.

92. It is said that juvenile court procedure is not appropriate for the very young offender. (24). This argument is really twofold. The first aspect relates to the nature of a proceeding under the Act. Such a proceeding involves, as it must, a modified form of criminal procedure including such matters as a formal charge, an answer by the accused, the calling of evidence, the right to cross-examine witnesses, and the like. The suggestion is that this procedure is both artificial and clumsy and simply does not accomplish, in juvenile proceedings, the objective that it is designed to achieve in an adversary proceeding involving adults. A very young child is unable to participate actively in the proceedings in the juvenile court. He is, in effect, in a position similar to that of the adult who is found unfit to stand trial – with perhaps one significant difference. The difference is that the child's disability might well be considered to have substantive implications. For, on much the same reasoning that the Criminal Code declares that no person shall be convicted of an offence committed while he was under the age of seven years, it is hard to conceive of a child even some years older being regarded as criminally responsible at all. The second aspect relates to the effects of the court proceedings on the child himself. They tend to confuse him. They bear no relation in his mind to the actual offence with which he is charged and have no positive value in terms of his behavioural problem. For very young offenders, some have said, the need for an educational as opposed to a penal approach requires that they be dealt with outside the courts altogether. (25).

93. It is contended that the quasi-criminal nature of juvenile court proceedings has undesirable consequences in terms of the social good. The connotations of crime and responsibility are said to cause an unescapable element of stigma to attach to an appearance in juvenile court.

This, it is argued, militates against preventative action on behalf of potential delinquents. Children in need of help would, it is said, be brought forward earlier but for the stigma of a court appearance. Similarly, because of the nature of the proceedings and the stigma that is involved, the standard of proof is high. Consequently, children who need the services of the juvenile court do not obtain them because of the prosecution's failure to satisfy the relatively high degree of proof necessary to establish that the particular juvenile committed the act of delinquency charged against him. Furthermore, the added stigma of a finding of delinquency is said to have unduly harsh consequences for a child in later life. More immediately, a child may suffer the effects of "labelling" - a matter that we have had occasion to consider earlier. And again, it has been suggested that because the term "crime" is still linked in many minds with the idea of punishment, the result of dealing with a child even under a quasi-criminal proceeding is that the judge may consider it to be his duty, notwithstanding the stated objective of the law, to punish the child as a way of registering moral disapproval.

94. A further objection to a quasi-criminal type of proceeding - and hence an argument for raising the minimum age - is concisely stated in the Report of the Committee on Children and Young Persons (Ingleby Committee) in England:

" The weakness of the present system is that a juvenile court often appears to be trying a case on one particular ground and then to be dealing with the child on some quite different ground. This is inherent in combining the requirement for proof of a specified event or condition with a general direction to have regard to the child's welfare. It results, for example, in a child being charged with a petty theft or other wrongful act for which most people would say that no great penalty should be imposed, and the case apparently ending in a disproportionate sentence. For when the court causes enquiries to be made, if those enquiries show seriously disturbed home conditions, or one or more of many other circumstances, the court may determine that the welfare of the child requires some very substantial interference which may amount to taking the child away from his home for a prolonged period.

..... The treatment ordered, especially if it involves removing the child from home, is almost inevitably regarded by the child and his parents, and often by others who are unaware of the

circumstances, as a punishment for the original offence -- and as an unduly heavy punishment where the offence was not particularly serious. Such a situation increases the difficulty of enlisting the co-operation of parents and child in the measures taken." (26).

95. Under the Act the juvenile court can only extend its jurisdiction to the parents when some demonstrable fault on their part can be shown. A judicial inquiry into parental fault is probably not, in any event, ordinarily the most effective way of coming to grips with family problems. Under an appropriate kind of civil proceeding, it is said, adequate measures can be applied beyond the child who committed the act, to parents - and possibly even others - whose behaviour may be contributing to the difficulty of the child.

96. The distinction between a "neglected" and a "delinquent" child is in some respects an artificial one. Viewed in terms of his behavioural problem, the delinquent child is usually one who has suffered some form of deprivation - a deprivation in many cases of a nature sufficient to justify proceedings for neglect under child welfare legislation. In some provinces a child coming from a certain home environment, will be charged and adjudged as a delinquent in proceedings before the juvenile court. In another province, coming from the same kind of home environment, he will be dealt with as a so-called "protection" or "neglect" case, against whom no charge is laid and no adjudication is made. In the first case, having been labelled a delinquent, the child is likely to be scorned by the public as a young malefactor. In the second case, because he is found to be a neglected child, and needing protection, he is the object of public sympathy and understanding. Yet in both cases the act or error or omission that brings the child to the attention of the authorities is the same. Thus it is often a matter of pure chance whether a child is charged with an offence and labelled "delinquent", on the one hand, or brought before the court as being in need of care and protection and called "neglected", on the other. Raising the minimum age it is said, would remove a source of unfairness. The assumption is that, for the reasons indicated, the distinction between "delinquency" and "neglect" need not be retained for legal purposes, at least in so far as very young offenders are concerned.

97. The main argument that has been made against having the minimum age raised concerns the problem of providing appropriate welfare services for the group that would no longer be dealt with under the federal Act. It seems evident that to exempt younger offenders from proceedings under the Act would, in most provinces at least, have the effect of imposing additional responsibilities upon child welfare authorities. It is true that in proceedings under the federal Act responsibilities may be imposed on



child welfare authorities. The court may, for example, order that a delinquent child be committed to the charge of a children's aid society or, in some cases, to the charge of the director of child welfare. In proceedings under child welfare legislation, however, the child welfare authorities are ordinarily involved as a matter of course. It is their responsibility to investigate allegations of neglect and to supervise, or assume custody of, children who are the subject of an order by the juvenile court. Moreover, in most places an attempt is made to keep delinquent and neglected children separate for the purpose of detention prior to a court hearing, a detention home being used for the former group and a receiving home for the latter. Fear has been expressed whether the receiving homes, which are operated by the welfare authorities, will be able to meet the custodial problem presented by some of this delinquent group. The suggestion is, then, that provincial welfare departments and children's aid societies do not have facilities adequate to deal with some of these difficult children under the age of twelve, or even ten; nor have they the personnel and other resources to cope with the added responsibility of handling an increased number of problem children. For these reasons welfare authorities have argued that a higher minimum age should not be established without making provision for a substantial increase in financial grants for welfare services. They indicate that it should not be necessary to duplicate the services already provided in some communities by the juvenile court, and further, that existing welfare services for dependent and neglected children should not be undermined by imposing upon these services any such additional burden.

98. The object of those who advance the various arguments for raising the minimum age limit is to make the point that Parliament should not concern itself at all with the problem of delinquency in the very young, but should leave the matter to be dealt with by the provincial legislatures under welfare legislation. We now attempt to assess the merits of the arguments that have been outlined above. In doing so we emphasize that there is not any one age that can be said to be the "right" minimum age of criminal responsibility, apart from a balancing of the various considerations that must be taken into account. In other words, different arguments will be more or less persuasive depending upon what alternative minimum age is proposed.

99. The problem previously raised in relation to participation by the young child in the hearing of an allegation of delinquency is a real one. We doubt, however, that changing the hearing from one of determining "delinquency" under the Act to one of finding "incorrigibility" or "moral danger", for example, under a provincial statute would solve the problem. It is true that the successful working of the adversary process (that is, prosecution and defence) requires the active interest of parties of approximately equal resources. In the context of welfare legislation this requirement of the adversary process could be satisfied only if the proceedings were against the parent



for neglect or some other parental failing in relation to the child. A simple case should suffice to illustrate the problem of adversary proceedings under welfare legislation. Assume that a child is alleged to be in need of care and protection in that he killed one of his parents without just cause. The child replies that his killing was excusable because he acted in self-defence. This issue of contested fact should, in the interests of society, be determined in an adversary hearing. In such a case the need for adversary proceedings in the interests of justice is not obviated by allowing the state power to be exercised against the child by virtue of welfare legislation rather than under the Act. Later in this Report we shall consider some methods whereby the benefits of an adversary proceeding can be obtained in the juvenile court. (27).

100. There has been no adequate research to determine whether juvenile court proceedings have a positive value in terms of a child's behaviour problems. Again the question is whether proceedings under provincial welfare legislation would be any more useful. These same comments are equally applicable to the problem of the child's confusion. Indeed, as more than one student of the American juvenile court system has pointed out, a civil proceeding may often prove to be more confusing to a child than a proceeding based on the principles of criminal procedure. (28). Although no submission was made to us that child welfare tribunals of the Scandinavian type would be preferable, we have considered the matter and doubt that they would constitute an advance over our present system. This is not to suggest that criticisms of the present practices of the juvenile court, to which we shall refer later, are beside the mark. We feel that the difficulties that exist can be resolved with radically altering the present system.

101. Some organizations have recommended that, in the case of the very young child offender, both he and his family should be referred to a child welfare agency and that there should be no occasion for court proceedings. This view, we think, fails to take into account the nature of our legal system. Any person who needs services can apply to a welfare agency and that agency can, if it so desires, provide what is needed. The control of anti-social behaviour presents a somewhat different problem. A disturbing event has occurred and the official representatives of the community feel that they must act, regardless of the wishes of the family concerned. It may appear advisable to remove the child from the home or to subject him to measures of control by the community at large. Even where the assistance of a child welfare agency might be thought sufficient, the fact is that the welfare agencies have themselves no power to impose their services upon an unwilling subject. Anglo-American law has traditionally proceeded on the principle that welfare or other authorities should be required to justify, in a formal court hearing, any such substantial interference with parental rights or the liberty of the child. In keeping with that principle, provision for some form of court proceeding will continue to be necessary - even

though, by one means or another, it may be possible to avoid court proceedings in many cases. The important question, at least initially, is not whether it is desirable that children should appear in court. Rather, it is one of finding an age below which, in the event that a court proceeding is required, it seems preferable to deal with serious anti-social conduct by means other than the criminal law. We say this in full recognition of the fact that techniques have been suggested, such as that proposed by the Committee on Children and Young Persons in Scotland (Kilbrandon Committee) for reducing to a minimum the necessity of a court appearance. (29).

102. The problem of stigma is one that has greatly troubled us as it has troubled many others. "Stigma" is defined as a "mark of disgrace or infamy; a sign of severe censure or condemnation, regarded as impressed on a person." (30). In that sense, persons suffer stigma in a variety of situations as a result of society's action. We are told that the essence of the criminal law is the community condemnation of prohibited conduct. (31). A man who robs or rapes is ordinarily considered to be a bad man. A man who is committed to a mental hospital may also suffer stigma even though society does not consider him blameworthy. This is to suggest that the community tends to regard a person who has been the subject of certain types of official action as "different", as posing risks to the successful working of the social enterprise - whether that enterprise be a classroom in a high school or a platoon in the armed services. We do know that children who have been found to be delinquent do have difficulty, as a result of an official finding of delinquency, in adjusting in school and obtaining employment.

103. Later in this Report we shall suggest some possible ways of reducing the undesirable consequences of a finding of delinquency. (32). At this stage it is sufficient to note that (a) the danger of stigma does not seem to have limited the use of the juvenile court where necessary, at least in Canada; (b) the improper or undesirable use, by individuals and agencies, of a finding of delinquency can be avoided or lessened in ways other than by removing the case from the jurisdiction of the court; and (c) stigma attaches not only because of the form of the proceeding, but also because of the possible consequences that can flow from it. Will a ten-year-old sent to a training school under child welfare legislation for killing without just cause or excuse suffer appreciably less consequences, in terms of stigma, than his identical twin sent to a training school for the same reason but by order of the juvenile court? In any case, as the Lord Chancellor said in debate in the House of Lords: "The Ingleby Committee attached importance to avoiding a criminal stigma, and if, indeed, this could be done, we should all agree with them. But the man in the street goes for the essence of the thing rather than the name, and if Johnny is before the Court for doing something which in an older child would have been larceny ... I suspect that his parents and neighbours will say that he has been taken before the court for stealing and not being in need of care, protection and discipline." (33).

104. Many children who need the services of the juvenile court do not get them. This is not so much because of the difficulty of proving delinquency but rather because of the lack of facilities and personnel in the juvenile court - a deficiency that exists whether the proceeding is under child welfare legislation or under the Act. This complaint fails to consider the real issue: in what circumstances is the state fairly entitled to use its power to force a person to take treatment against that person's will? The kind of services that the juvenile court can offer by way of counselling or informal adjustment - where adequate services are available - are, we think, another matter. We deal with this question later in our Report. (34).

105. We recognize that the fear that judges will be motivated by punitive feelings because of the quasi-criminal nature of the proceedings may be a real danger. The provisions of the Act setting out that the delinquent child is to be dealt with as one requiring help, guidance and proper supervision should be a sufficient safeguard against the danger. To the extent that they are not, the primary inference one can then draw is that persons of the wrong type are appointed as juvenile court judges. In that event the solution would seem to be that properly qualified judges be appointed, a matter with which we deal at a later stage. American experience, we may add, makes it evident that substitution of a civil for a criminal form of proceeding is unlikely to remove the danger. (35).

106. We agree that there is a basic difficulty in combining the requirement "for proof of a specified event or condition" with a general direction "to have regard to the child's welfare". (36). We doubt, however, that a solution to this difficulty is to be found in a change in the type of procedure that is employed. While proceedings might be brought under provincial legislation relating to children who are alleged to be "incorrigible" or "in moral danger" or the like, and while the focus of an inquiry might thus shift to the whole background and way of life of the child, the fact remains that in the minds of the child and his parents it is an act that constitutes a legal offence that is the occasion of the court's intervention. An order by the court that seems to be out of proportion to the gravity of that offence will, in our view, continue to seem unfair. One author has spoken of the "gap which separates the attitudes and purposes of an enlightened juvenile court from the function of courts as such in the minds of young offenders and their parents" as an inherent dilemma of juvenile court systems generally. (37). The following observation of the author seems relevant in this present context: "Children attach guilt to actions rather than situations; .... if we set out to deal with persons and situations rather than with offences .... we are introducing complexities which people themselves do not grasp. In this, to them, confused situation, those who come before the courts may feel lost and powerless against authority, .... and thus may be threatened as persons just because the aim of the courts is to treat them as persons." (38).



107. That it is desirable to involve a child's parents as fully as possible in proceedings affecting the child is a proposition to which few, if any, would take exception. However, we do not consider that this objective is incompatible with the existing juvenile court process. Requiring the co-operation of the parents may necessitate an element of compulsion, regardless of whether the proceedings are civil or criminal in nature. The important issue of principle concerns the basis, if any, upon which the state is entitled to exert its power against a parent because of the anti-social conduct of his child. We deal with the problem of compelling the attendance of parents in juvenile court and with the matter of sanctions against parents later in this Report. (39).

108. In so far as the behaviour problem of the child is concerned, the distinction between "delinquency" and "neglect" is often an artificial one. That is to say, it is often a matter of chance whether a child is charged under the federal Act or is brought before the court under provincial child welfare legislation. However, reliance upon this consideration to justify abandoning the legal distinction between "delinquency" and "neglect" would, we think, be a mistake. The importance of the distinction for legal purposes depends, not upon any characterization of the child in terms of one category or the other, but upon the appropriateness of a particular proceeding to achieve in any given case a desired legal result. (40). There may be a number of reasons why, having regard to what is required in the sound administration of justice, the initial focus of a proceeding should be on the conduct of the child. Nor does this cease to be the case simply because the welfare of the child in both delinquency and neglect proceedings is intended to govern the disposition that the court will ultimately order. One advantage of a criminal type proceeding, for example, is the fact that it addresses itself to the responsibility of the offender. One submission to the Committee states the point in this way:

" Even though in many cases the court may find that the home is mainly responsible, the initial presumption must be that the child himself is responsible; otherwise, the effect upon the child runs directly counter to sound guidance principles. Regardless of contributing environmental factors, the child must be helped to accept responsibility for his acts and it must not be absolved therefrom merely because his parents also share the responsibility. "(41).

109. Moreover, while the distinction between "delinquency" and "neglect" may often be an artificial one, it is not always so. There are cases of children who engage in anti-social conduct whose activities are not the result of any parental neglect. This must be so unless we are to accept the unresearched and therefore unconfirmed proposition that juvenile anti-social behaviour proves parental neglect. Common sense and common experience are to the contrary. A ten-year-old child who is left to fend for himself can



rationally be considered to be neglected. Presumably no reasonable person will object if the state declares that, as a result, the parents may lose their right to custody of the child. Let us imagine that, a year later, while he is receiving proper care, he viciously assaults another child. Is he neglected or is he delinquent? We think that the basic question is this: when is it fair to impute some degree of moral blame to a child for his anti-social conduct, even if that blame is of a lesser degree than would attach to an adult who engaged in the very same activity? What is required, in our view, is not a kind of proceeding that will minimize the distinction between "delinquency" and "neglect", but rather, a means of ensuring that the decision as to how any case should be dealt with is reached on a rational basis. One way of accomplishing this is through the intake procedures of the juvenile court. Another is to make available to the judge powers of disposition that are flexible enough to enable him, at any stage of a delinquency proceeding, to suspend further action under the federal Act and make an appropriate order under - and to the extent permitted by - provincial legislation relating to the care and protection of children. Both of these matters are discussed in more detail later in our Report. (42).

110. The main argument in the submissions to us against raising the minimum age relates, as we have said, to the problem of facilities and services. We recognize that raising the minimum age will have some effect upon existing arrangements in regard to child welfare services, an effect that will probably vary from province to province depending upon the structure, role and comprehensiveness of child welfare services and upon whatever new minimum age may be established. Nevertheless, we are unable to give to this argument a weight sufficient for it to overbear the contrary view. For the argument is not one of principle. At the present time difficult young children who engage in anti-social conduct are dealt with by the juvenile court under the federal Act. They receive what services they do in institutions (training schools), treatment facilities (mental hospitals; residential treatment centres for disturbed children), in foster homes, or from organizations (children's aid societies) that are all financed by the provinces and municipalities. We do not understand why dire effects would result if the children received these services by virtue of an order of the juvenile court under provincial child welfare legislation rather than under the federal Act.

111. We thus agree that the minimum age for juvenile court jurisdiction under the Act should be raised. Our assumption throughout has been that the Act is the counterpart of ordinary criminal legislation modified for those in a specialized age group who because of their age cannot be held to be fully responsible for their actions. We cannot see how the very young child, now within the Act, can be held responsible at all on any reasonable conception of the purpose and function of the criminal law. It is true that an element of stigma may attach to proceedings even under

provincial welfare statutes. Nevertheless, we do not think it proper for Parliament to impose community condemnation, in however attenuated a form, on a very young child. Furthermore, the inevitable community condemnation inherent in an adjudication of delinquency makes it unfair to allow such a child to be found delinquent in a proceeding in which he is unable to participate effectively. For reasons previously examined we do not find persuasive the argument relating to the problem of services. It is important to note, in this connection, that of the children found to be delinquent in Canada, only some three to four per cent are under the age of ten. Even if the minimum age were raised to twelve, the group affected would still represent only about twelve per cent of the total number of offenders involved. We recognize that raising the minimum age limit under the Act may require the provincial legislatures to amend their child welfare legislation. This is a small price to pay, in our view, if the change in the Act is otherwise desirable. In any case, as we have noted repeatedly, in the field of juvenile delinquency there is a great need for co-operative federalism of the highest order.

112. We have had some difficulty in reaching agreement on a specific minimum age. We are not of the view that any increase in the minimum age, however substantial, is desirable for its own sake, without reference to a specific purpose that the increase is intended to serve. It is important to remember also that, whatever age is selected at the federal level, there will remain considerable scope for dealing with offenders under provincial child welfare legislation to an age higher than that established as the minimum age under the federal Act, as a matter of either administrative or judicial decision. We think it advisable, indeed, that the juvenile court judge should have every opportunity to suspend action under the federal Act in appropriate cases and to direct or authorize that further steps, if any, be taken under the relevant provincial legislation. We deal with this question later in our Report. (43). The problem that the minimum age of criminal responsibility presents is whether access to a court of criminal jurisdiction should be denied altogether in every case below that age - even, for example, where the act would constitute the extreme offence of homicide.

113. Moreover, we emphasize again that there is no one age that can be said to be the "right" minimum age of criminal responsibility. Indeed, as the Kilbrandon Committee has pointed out, the "age of criminal responsibility" is largely a meaningless term. (44). In some countries it is used to signify the age at which a person becomes liable to the full penalties of the criminal law. This is not, of course, the case in Canada, where the juvenile court process itself represents an institutional embodiment, within a framework of criminal law, of the concept of diminished responsibility in relation to juvenile offenders. In the context of our legal system, the age of criminal responsibility is simply a convenient means of indicating, for jurisdictional purposes, a limit below which the criminal law is not regarded as an effective method of social control. As such, it is an artificial concept, In the Kil-

brandon Committee's words, it "is not ... a reflection of any observable fact, but simply an expression of public policy ...". (45). It is true that the principles of criminal liability were developed at common law in terms of a child's capacity to appreciate the difference between right and wrong, so that the language of criminal responsibility carries with it some implication that a child has the requisite degree of knowledge to form a "criminal intent". However, this emphasis on "knowledge" as the basis of criminal responsibility has often been criticized.(46). Commentators have pointed out, quite properly, that the relationship between chronological age and the capacity to form a criminal intent is tenuous at best and that, in any event, the fact that a child does know right from wrong does not necessarily mean that he has acquired sufficient emotional maturity or independence from environmental influences to act on that knowledge. It is in recognition of the fact that a child, even considerably above the "age of criminal responsibility", should not be regarded as having a personal responsibility equivalent to that of an adult, that society has come to employ the method of the criminal law in a special way in dealing with juvenile misconduct - that is, through the juvenile court process. The appropriateness of any minimum age, then, is not really a matter of psychological assessment of the capacity of children of different ages to know the differences between right and wrong, or even to act upon that knowledge. Rather, it is a question of evaluating the effectiveness of the criminal law, in comparison with other methods of social control, as a means of dealing with the problem of anti-social behaviour presented by different age groups.

114. For reasons that we have explained we accept the present juvenile court process, in its essential features, as the preferred approach to the problem of the juvenile offender. We have thus sought to assess the appropriateness of any proposed minimum age, not by reference to possible alternative systems of control, but in terms of the effective operation of the existing system. That is, we have seen the problem as one of selecting an age that meets two basic requirements. First, it should be an age at which more serious offences occur with sufficient frequency to require that a quasi-criminal type of procedure be available. Second, it should be an age at which the adversary features of the system, even modified as they are in a juvenile court hearing, can ordinarily be expected to function with at least a minimum degree of effectiveness. On the strength of these considerations it would seem to us that an increase only to about the age of ten is indicated - although we recognize that these same considerations might well persuade others that an increase to the age of eleven or twelve would be justified. In any event, for one principal reason we hesitate to recommend a minimum age of ten, at least without qualification. The view is held by some that future efforts at dealing with the problem of the juvenile offender should move still further away from a criminal law approach in the direction of welfare or educational measures, administered either through a form of child welfare legislation or through a system almost entirely divorced from the courts. This was the conclusion reached by both the Ingleby and Kilbrandon Committees.



The Child Welfare Act of Saskatchewan already represents a step in this direction. (47). What causes us concern is the fact that, by establishing a fixed minimum age of ten, the effect is to limit, to some extent, the development of such alternative techniques of a welfare or educational nature by any province that should wish to undertake them.

115. One possible solution that we have considered is a flexible minimum age of juvenile court jurisdiction. Under such a scheme it would be open to any province to make whatever arrangements it wishes for children up to the age of fourteen, including the enactment of legislation making the federal Act inapplicable altogether to offenders below that age. One objection that can be made to this approach is that, having regard to the fact that the Act is a form of criminal legislation, the age limits of juvenile court jurisdiction should be uniform across Canada. We think it important to note, however, that this objection probably does not apply with quite the same force to the minimum age as it would to the maximum age. The situations differ in two principal respects. First of all, the consequences of a variable minimum age limit are not the same. Persons of the same age in different provinces would not, as in the case of a variable upper age limit, appear before different courts - that is, the criminal courts in one province, as opposed to the juvenile court in another. All offenders would presumably come before the juvenile court, but pursuant to different legislative authority. The implications are different also from a disposition point of view. The Juvenile Delinquents Act and the children's protection legislation are alike in directing that the welfare of the child is to govern whatever disposition is ordered by the court. Moreover, a variable minimum age would not mean, as would a variable maximum age, that an offender in one province could be sent to a training school, whereas an offender of the same age in another province must, if confinement were required, be sent to a correctional institution for adults. The committal would ordinarily be to a training school in either province. Indeed, training school populations now do not consist entirely of children found delinquent, but include as well children admitted pursuant to provincial legislation. A second difference between the two situations relates to the matter of administrative practice. As we have noted earlier there are considerable variations from community to community in the manner in which offenders are dealt with following apprehension. This is especially true of very young offenders. While in some places it is the practice to deal with these cases informally, or, to the extent possible, under child welfare legislation, in others proceedings are brought under the federal Act. In so far as younger children in particular are concerned, therefore, a uniform minimum age does not mean uniformity of treatment. The fact that the minimum age might be raised in some provinces would probably create little more disparity than now exists. It might, in fact, have the effect of encouraging greater uniformity in approach.

116. These considerations notwithstanding, we are not entirely satisfied that a flexible minimum age represents a satisfactory solution to the



problem of finding an acceptable minimum age of criminal responsibility. While the implications of the fact that a proceeding is designated "criminal" are difficult to assess, the fact remains that a child would be dealt with in one province under legislation that is regarded as "criminal", and in another province under legislation that is considered to be "non-criminal". On balance, therefore, we think it preferable that there be a uniform minimum age. Moreover, it is our view that this age should be set at ten, or at most, twelve. We would emphasize that our proposal is intended not as a measure of cautious reform, but as a choice that seems to us to be reasonable from a functional point of view, having regard to the nature and objectives of the present juvenile court system. In any event, the issues involved are such that we think that the matter should be the subject of discussion between the federal government and the provincial authorities before a final decision is made.

### The Doli Incapax Rule

117. In paragraph 89 we referred to the provisions of the Criminal Code that incorporate common law exceptions to criminal liability. At common law not only was there a complete exemption from criminal responsibility for any child under the age of seven but, in addition, there was a rebuttable presumption that a child between the ages of seven and fourteen was incapable of committing a crime. To establish criminal liability the prosecution was required to show that the child had sufficient moral discretion and understanding to appreciate the wrongfulness of his act. (48). The rule - known as the doli incapax rule - is carried over into section 13 of the Criminal Code. (49).

118. We suspect that many juvenile court judges are not familiar with the doli incapax rule. The rule is, in any event, difficult to apply. In England the Ingleby Committee noted that the rule has led to inconsistency in the administration of the law. Many juvenile court judges, it seems, ignore the rule altogether, while others differ in the degree of proof of guilt that is required. (50). Canadian experience seems to have been much the same. There is evidence, moreover, that the rule has been interpreted so as to justify practices that have a dubious standing at law. Background information, which is not properly before the judge until after a finding of delinquency is made, is sometimes reviewed at the adjudication stage for the purpose of making the determination required by the rule. The similarity in wording between section 13 of the Criminal Code and the operative test for insanity has apparently caused some confusion, (51), leading at least one juvenile court judge to order a psychiatric examination in order to determine what position to take in regard to the presumption.

119. While we do not accept the view that the need of a child for "treatment" should of itself be sufficient to sustain an assertion of jurisdiction by the juvenile court we think that the doli incapax rule can be

safely abolished. The rule was formulated at a time when there were no juvenile courts and when the penalties of the criminal law were extremely harsh. Having regard to the difficulty in interpreting and applying the rule, and to the modest sanctions available under the present law, we doubt that there is any real advantage in retaining the rule. It is important to note also that the presumption weakens with the advance of the child's years towards fourteen. Its principal value is in connection with proceedings against offenders who are very young. Our proposal for raising the minimum age of criminal responsibility would further diminish the need for the rule. Finally, we think that the basic objective that the *doli incapax* rule is designed to serve can be accomplished more effectively through flexible disposition provisions. Our recommendations in that regard are discussed later in the Report. (52).

### Maximum Age Limits

120. The Act permits the individual provinces to establish the maximum age limit for young persons in the juvenile court at ages sixteen or eighteen. (53). That is to say, depending upon the province concerned, the court loses original jurisdiction when the juvenile reaches the age of sixteen or eighteen, as the case may be. Consequently, there is variation in the juvenile age across Canada. It is sixteen in Saskatchewan, Ontario, New Brunswick, Nova Scotia and Prince Edward Island. It is eighteen in British Columbia, Manitoba and Quebec. It is eighteen for girls and sixteen for boys in Alberta. In Newfoundland, where the Act is not in force, it is seventeen under provincial legislation. (54).

121. These variations suggest that determination of the appropriate juvenile age is a difficult problem. The difficulty is not peculiar to Canada. A similar diversity exists in the relevant legislation throughout the world. In such countries as Denmark, Finland, France, Italy, and the Netherlands the juvenile age is eighteen; in Belgium it is sixteen, and in Greece and the United Kingdom it is seventeen. The statutes of three of the six Australian states set the maximum age at seventeen; the other three set it at eighteen. Most American states, with some important exceptions such as New York, set the juvenile age at eighteen. (55).

122. There are two introductory observations that should be made in order that the various recommendations made to us on the matter of the juvenile age can be properly appreciated. First, under the Act, not all children within the age jurisdiction of the juvenile court have to be tried in that court. Section 9 empowers the court to waive jurisdiction in favour of the criminal courts over persons fourteen years of age and older charged with indictable offences. In other words, raising the juvenile age does not necessarily mean that all members of the older group will, without exception, be tried in the juvenile courts. The matter of waiver jurisdiction is dealt

with later in this Chapter. Second, the feeling seems to be quite general that some special provisions should be made in the law for offenders above the age of sixteen - at least to the age of eighteen, and possibly to the age of twenty-one. Some would accomplish this by raising the juvenile age. Some would provide special youth courts. Others would make it possible for certain classes of cases to be transferred back to the juvenile court from the criminal courts. Finally, a number would amend the Criminal Code to extend the philosophy of the Juvenile Delinquents Act, so far as seems appropriate, to the treatment of youthful offenders. The point is that any recommendation on the matter of the juvenile age ordinarily implies some judgment on this broader issue, a fact that should be kept in mind when alternative proposals are being considered.

123. Those who favour setting the juvenile age at sixteen emphasize, in support of their position, the different nature of offences committed by young persons above that age, the inherent limitations of the juvenile court approach and the problems that older offenders present from the point of view of treatment resources and programming. We are told that sixteen is the age at which court appearances begin to reflect more serious and persistent forms of criminality. Moreover, behaviour patterns among the group from sixteen to eighteen have become fairly well fixed, and hence more difficult to modify. Often these offenders are quite hostile to society and its official representatives. Because of these characteristics of the over-sixteen group, it is said that they are unsuitable subjects for the juvenile court process. This was the conclusion of the Archambault Commission, which observed: "The methods of dealing with the children .... (those under sixteen) ...., and the characteristics of the court that should be applied to children of this age, are entirely different from those which ought to be applied to young persons between sixteen and eighteen years." (56). The relatively informal procedure of the juvenile court, and its implicit reliance upon a treatment-oriented relationship between the juvenile court judge and the offender, are considered to be inappropriate for older adolescents. Moreover, the nature of the cases coming before the court makes it more necessary to have legally trained judges. Above all, there is the need to instil in future citizens of this country the awareness that at some point in their lives they will be held fully accountable for their conduct. The argument is that whether or not the offender of sixteen can properly be regarded as completely mature, nevertheless the failure to treat him as such may have adverse consequences in terms of his own development. In the words of a Canadian Welfare Council report, "many children in the 16 to 18 group resent being treated like children, and would respond better if they felt they were treated more like adults." (57).

124. The problem of treatment resources and programming has caused particular concern. The matter of resources is, in fact, of central importance. The juvenile court concept, with its predominant emphasis on treatment,



presupposes that the court will have at its disposal a flexible system of educational and rehabilitative measures, as well as ready access to diagnostic facilities and competent expert advice. Those who favour a juvenile age of sixteen point out that, except in a few larger centres – and even this exception must be qualified – these resources either do not exist or are totally inadequate to meet the demands that are placed upon them. Probation officers' caseloads, for example, are usually such that intensive probation supervision is impossible. Having regard to this lamentable deficiency in services, some have taken the position that there should be a concentration of the available staff and resources upon those offenders with whom the prospects for success are the greatest – that is, young offenders below the age of sixteen. It is perhaps the training schools that are affected most by a higher juvenile age. Here the problem is not only that there is a danger of diluting existing services, but also that the schools must develop institutional treatment programs adequate to the needs of a population varying widely in age and maturity. Writing in 1938 the Archambault Commission observed: "The problem of . . . . training schools would be clearly aggravated, and, in our opinion, has been aggravated, where the age limit has been increased." (58). It is perhaps a sufficient indication of the present situation to note the views of The Canadian National Conference of Training School Superintendents, as expressed in their submission to the Committee:

" The resources of the majority of training schools are not such as to permit of satisfactory treatment of the 16-18 age group who cannot be treated as children and whose presence in schools which cater to the 10-16 age group can have a deterrent rather than a helpful effect upon the total programme. The dire shortage of clinical personnel and of experienced personnel in training schools is such that we believe there should be a concentration of effort in the years up to the age of sixteen when the possibility of effecting a marked change in attitudes, in work habits and in patterns of behaviour is stronger than it is at the age of eighteen. The more concentration there is on the treatment of the young offender , the more likely it is to be successful – with a consequent reduction in the numbers who eventually come into adult institutions." (59).

125. A further argument in support of a juvenile age of sixteen is based upon the definition of delinquency in the present Act. Under this definition, any person within the age range of juvenile court jurisdiction can be found delinquent for a variety of types of conduct that are not offences if committed by an adult. As the authors of the Canadian Welfare Council

report observed, "certain activities such as truancy, staying out at night, disobedience, etc. cannot be considered delinquency in a child over 16, although they may be in a child under 16." (60). To this list might well be added that part of the definition of "juvenile delinquent" that reads, "any child who . . . is guilty of sexual immorality. . . ." (61). As we shall see, this is not the only problem presented by the definition of delinquency under the Act. Should, for example, a seventeen-year-old charged with careless driving be brought before the juvenile court or the adult court? We leave further consideration of such questions to our discussion of offence jurisdiction.

126. The arguments in favour of an upward revision of the juvenile age are essentially three: the fact that growth into full psychological maturity is delayed for young persons in contemporary society because of the prolonged period of dependency that is required of them; the need for one court to be responsible for teen-agers as an identifiable group; and the desirability of protecting young persons for as long as possible from exposure to the sometimes hopeless conditions in jails and institutions for adults.

127. Although boys and girls of sixteen or seventeen may be physically more mature than were their grandparents at that age, the teen-ager of today does not become an adult socially and economically as early as did his counterpart of 1908. It is common knowledge that since the Act was drafted the age at which a youngster is permitted to leave school has been raised in every province, and that more teen-agers continue their education beyond the school-leaving age than was true fifty or even ten years ago. Increasing educational requirements for employment in industry or in commerce make it almost inevitable that this trend will continue. Thus the teen-age years have come to be devoted to academic and vocational preparation, with young persons in most cases dependent upon their parents for room and board. There has been much speculation about the consequences of these changes. Some social scientists have suggested that young persons in their late teens today are subject to strains of an entirely different order than were their counterparts of a generation or so ago - strains that alter significantly the process of achieving maturity. The following quotation from a recently published article on psychological theory and juvenile delinquency may serve as an example:

" . . . There are profound discrepancies between adolescence in the 1960's and a century ago. In the nineteenth century there was almost no such thing as an adolescent; adolescence was certainly not the prolonged period that it is currently. Stringent taboos on sexual behaviour were not enforced from age 12 to age 22 (as is often the

case now) but only from age 12 to 16 or so. As soon as the youth was able to work and function as an adult he became an adult. There were virtually no truancy laws or child labor laws until comparatively recent years. The economy needed the participation of the entire family; the adolescent had an important role, was needed, and belonged. Quite in contrast, the twentieth century has almost no place for the adolescent. He is denied the protection and exemption from responsibility characteristic of childhood, but he is also denied the rewards and privileges of adulthood. He is in a psychosocial 'no man's land'." (62).

128. The conclusion that some would draw from these observations on the position of the contemporary teen-ager is that, because he is "denied the rewards and privileges of adulthood" - because, in fact, he is not fully mature - it is unjust that he should be held responsible for his actions in the same way as an adult. In support of this same conclusion, reference is sometimes made also to other indications in the law that young persons do not have the competence required of an adult. A sixteen-year-old cannot vote, drink liquor, make a valid will, enter into contractual relations that are binding against him, marry or enlist in the armed forces without parental consent, to mention only a few of his disabilities based on age. In so far as freedom from special legal restraints upon particular forms of activity can be considered criteria of adulthood it seems clear that, in the eyes of the law, adulthood is a relative matter. It depends largely upon the purpose for which one claims or denies that status.

129. Another argument that is made for raising the juvenile age is that teen-agers have come to form an identifiable group in our society, having a distinctive and often semi-autonomous way of life of their own. The American Academy of Political and Social Science, for example, saw fit to devote an entire issue of its publication The Annals to the phenomenon of "teen-age culture". (63). During the adolescent years, we are told, young persons place an extremely high premium on acceptance by their fellows - so much so that values that would otherwise be acknowledged and adhered to are often sacrificed for the sake of "peer approval". In the context of the dynamic changes that are taking place in modern society, this reliance upon "peer approval" that characterizes adolescence has, it is said, led teen-agers to think of themselves as a group apart in a new and distinctive way. Such theoretical speculations aside, it is clear that adolescence marks a critical stage in the life of a youngster in establishing



his identity, his sense of responsibility, and his relationship to the society in which he lives. (64). For this reason, much teen-age misbehaviour would appear to be transitory - that is, it represents activity, in response to personality needs, that is not likely to last beyond the teen-age period. (65). Consequently, some suggest that there should be one specialized court responsible for all persons of less than full maturity who violate community standards.

130. Finally, it is argued that the benefits of the juvenile court approach should be extended to as wide a group of offenders as possible. In particular, it is important that adolescents should not be placed in inadequate lock-ups or committed to adult correctional institutions where they will be exposed to older, more experienced criminals. Some persons would extend the upper age limit of juvenile court jurisdiction to accomplish these objectives.

131. We agree that special provision should be made in Canadian criminal law and correctional practice for an older group of offenders than is now dealt with under the juvenile court process. However, we do not think this should be done by raising the juvenile age. On this point we concur with Professor Tappan, in his proposals prepared for the American Law Institute's Model Penal Code, that "the task of handling young adults is unsuited to the specialized competence of such ....(juvenile) .... courts and that these more mature offenders need a treatment differentiated from that provided juveniles." (66). Our own views are perhaps best summarized by quoting briefly the following conclusion from a recent study of juvenile justice in Sweden and California: "....experience indicates that the periods of childhood, adolescence and young adulthood as a general rule present their special physical, emotional, and social problems, which a progressive and realistic crime-preventive policy cannot disregard. This may imply the necessity of a general differentiation not only between the juvenile and adult offender, but also between the child, adolescent, and young adult who has committed crime..." (67).

132. It is our recommendation that the juvenile age be set at seventeen. The juvenile court, in other words, would have exclusive original jurisdiction over all offenders sixteen years of age and under. (68). For reasons to be discussed we favour uniform age limits. The age of seventeen is in some respects a compromise. We might point out, however, that there is evidence, cited by Professor Tappan, that seventeen is a more appropriate natural dividing line than either sixteen or eighteen. (69). He concludes: "While there is no complete uniformity in this range, characterized as it is by spasmodic and disjointed growth rates in physical, social and emotional maturity, authorities have noted that the spurt to maturity has usually occurred by the age of 17. Youngsters from 13 through 16 are a group apart from those 17 through 20." (70). Seventeen, as we have noted,

is the juvenile age in the United Kingdom.

133. We base our proposal for a juvenile age of seventeen upon two principal considerations. First, for reasons suggested in the discussion in preceding paragraphs, we think that a slight upward revision from the juvenile age that is now in effect in the majority of provinces has much to recommend it. In particular we are impressed by the advantage of keeping as many of the sixteen-year-old group as possible out of adult penal institutions. Second, the age of seventeen will involve less by way of administrative change or adjustment across the country than would an age of sixteen or eighteen. In two of the three most populous provinces - Quebec and British Columbia - the age is now eighteen. To lower the age to sixteen might, so far as these provinces are concerned, have disturbing implications in terms of existing institutional arrangements and services. Raising the age from sixteen to eighteen might create equally difficult problems for some of the other provinces. In any event, for other reasons already noted, we are firmly of the view that the juvenile age should not be set as high as eighteen. It seemed to us that there was something artificial about some of the juvenile court proceedings that we observed where older offenders were involved. Having regard to what we think are the inherent limitations of the juvenile court approach, and also to the problems presented from the point of view of treatment resources and programming, it is our conclusion that seventeen should mark the upper limit for the operation of the juvenile court process.

134. Objections to raising the juvenile age above seventeen could, it has been suggested, be met by using one or more devices designed to secure a measure of flexibility in regard to the maximum age limit. These include: waiver of jurisdiction; providing for concurrent jurisdiction in both the juvenile and adult courts over older adolescent offenders; and permitting the criminal court to refer certain older offenders to the juvenile court, or to deal with them in the criminal court under the provisions of the juvenile court law. We examine these proposals later in this Chapter under the heading of "Waiver of Jurisdiction".

135. In introducing this discussion of the maximum age limits of juvenile court jurisdiction we pointed out that there is implicit in any recommendation on the matter of the juvenile age some judgement concerning the methods that are appropriate for dealing with older adolescent offenders generally - that is, offenders up to at least the age of eighteen, and probably to the age of twenty-one. As we have stated, it is our view that Canadian criminal and correctional policy should take into account the special needs of this older adolescent group. While, strictly speaking, this problem is beyond our terms of reference, we do offer the following comments. First, we think it is important to recognize that, while many of the most hardened offenders are within this age range, there are others for whom even moderately serious misbehaviour is transitory, representing only a stage, albeit a critical one, in the process of

growing up. Accordingly, we suggest that it might well be considered a basic object of criminal law policy to adopt what can be termed a "containment approach" in regard to this age group. That is, the criminal process should be structured, so far as possible, in such a way as to allow the ordinary processes of achieving maturity to take their course and to ensure that nothing is done at any stage of administrative or judicial decision that may tend to strengthen a deviant behavioural pattern that has not yet become fixed. Second, we would emphasize that probably the greatest single need is for the development of diversified and adequate treatment resources for the older adolescent offender. Third, we doubt the advisability of establishing an independently constituted "youth court". In our view, an additional specialized court within the Canadian judicial system would create unnecessary administrative and financial problems and would, in any event, probably lack the prestige and status necessary to accomplish the desired goals. It is our opinion that most of the objectives sought by those who favour a youth court – for example, increased use of pre-sentence reports, expunging of criminal records and the appointment of specially qualified magistrates – can be achieved without establishing such a court. Finally, we would add a specific recommendation that an intensive and detailed study of the problem of the youthful offender be undertaken as part of the development of the criminal law policy of Canada.

136. We adopt the unanimous opinion of the individuals and organizations who made representations to us that the juvenile age should be uniform throughout Canada. We do so essentially for reasons already set out. A federal statute, especially one concerned with matters of criminal law, should not be open to the charge of discrimination. Nor is there, in our view, a true analogy between the Act and the Lord's Day Act, under which provincial variation is also permitted. (71). We might point out as well that a variation in age limits as between provinces can serve to defeat the purpose of section 421(3) of the Criminal Code in relation to juveniles who commit offences in more than one province. (72). Section 421(3) is designed to afford an accused who is in custody in one province the opportunity of disposing of all charges outstanding against him in other provinces. It is thus intended as a rehabilitative measure. Because of the present variation in the juvenile age it may happen that a young person will serve a sentence in one province and then be returned to face charges in another province. In other words, the effect may be to deny him a privilege that could have been made available were he an adult. A simple example will illustrate the problem. A boy, seventeen years of age, steals a car in British Columbia and drives to Saskatchewan. He breaks and enters premises in British Columbia, Alberta and Saskatchewan. In Alberta, where he is apprehended, the juvenile court lacks jurisdiction because of his age. He is tried in the ordinary courts which can take into account his offences in Saskatchewan but apparently not those in British Columbia. After serving the sentence imposed by the Alberta court our offender is theoretically subject to the jurisdiction of the juvenile court in British Columbia. Similarly, if he had been first apprehended in British Columbia, it seems that the juvenile



court there could not take into account the offences committed outside that province so as to preclude the ordinary courts in those provinces from trying him. This result is clearly undesirable.

### Jurisdiction Over Offences

137. The jurisdiction of the juvenile court in relation to juvenile misconduct is defined in sections 2 and 3 of the Act. Subsection (1) of section 3 provides: "The commission by a child of any of the acts enumerated in paragraph (h) of subsection (1) of section 2, constitutes an offence to be known as a delinquency, and shall be dealt with as hereinafter provided." The section then goes on to indicate, in subsection (2), that "Where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision." Section 2, defining the term "juvenile delinquent", sets out the various things that, if done by a child, may subject him to proceedings under the Act. Section 2 provides as follows:

" 'juvenile delinquent' means any child who violates any provision of the Criminal Code or of any Dominion or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute."

138. There are four important things to note about these offence provisions. First of all, the Act creates one omnibus offence, embracing all forms of prohibited conduct for children. Whenever a child is charged with an offence, whether it is an alleged violation of a federal statute, a provincial statute, or a municipal by-law, proceedings must be brought under the Act. Thus the Act operates in combination with provincial legislation by means of a form of incorporation by reference. Secondly, the definition is an extremely broad one. The specification of what is prohibited lacks the precision that one ordinarily expects in a criminal statute. The Act speaks of a child "who is guilty of sexual immorality or any similar form of vice" - and further, of a child "who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute." The statutes of some provinces add other categories, such as "incorrigibility" and "unmanageability". Thirdly, the offence provisions have been drafted not simply to define conduct that is prohibited, but also to state something about the offender. In the words of one submission, "delinquency is defined as far as possible as a state or

condition, so that the child is looked upon as having a tendency to anti-social behaviour, rather than as having committed one undesirable act." (73). Finally, the definition includes conduct that is not prohibited in the case of an adult.

139. To those who are familiar with the literature of the juvenile court movement the reason why a "delinquency" was defined in this way is apparent. The Act is an exercise in prevention - an attempt within the framework of the criminal law, to identify the potential criminal at an early age and to provide, through the intervention of the juvenile court, the means of preventing youthful anti-social behaviour from developing into serious and persistent criminality. Basic to this approach is the judgment that, while young persons are still in their formative years, it is more important to have regard to the behavioural problems that an offender may have than to specific forms of conduct because, for a variety of reasons, his conduct may be largely a response to environmental influences for which he himself should not be held responsible. Thus it was considered that the juvenile court would perform a function akin to guardianship, a function quite different from the traditional criminal process. (74). Attention would be focused, not so much on the specific act that brought the child into difficulty with the authorities, but upon his whole mode of life, with a view to giving him "help and guidance and proper supervision". So viewed, it is understandable that the jurisdiction of the juvenile court would be set out in very broad terms. (75). A court proceeding was, in such adverse social or individual circumstances, thought to be in the child's own interest.

140. As we have noted previously, this conception of the role of the juvenile court is an American one. Its rationalization was found in the doctrine of "*parens patriae*", a right of the Crown, as general overseer of the welfare of all children in the realm, to step in to provide protection when parental protection was lacking. (76). In furtherance of this idea juvenile court statutes in the United States established a civil form of proceeding for dealing with juvenile offenders. An historian of the pioneering Illinois Juvenile Court Law of 1899 explained: "Great care was given to eliminate in every way the idea of a criminal procedure. The law was expressly framed to avoid treating a child as a criminal. To this end the proceedings were divested of all the features which attach to a criminal proceeding." (77). The assumption was that a finding of delinquency would thus carry with it no "taint of criminality". For the same reason, there was not thought to be any objection to giving the juvenile court jurisdiction of an extensive nature.

141. Those concerned with drafting the original Canadian Act regarded the "*parens patriae*" approach as the preferred legislative model. However, as we have indicated, a constitutional difficulty stood in the way of adopting this approach in Canada. As the regulation of the civil status of persons is within the exclusive jurisdiction of the provincial legislatures,

it was beyond the competence of Parliament to enact legislation creating, as did the American juvenile court statutes, a non-criminal status of delinquency. Moreover, because the field of criminal law was within the exclusive jurisdiction of Parliament, neither could the provincial legislatures enact legislation on the American pattern. Accordingly, a compromise solution was devised. "Delinquency" was treated as conduct and made an offence. Implicit in the creation of a single offence, and the inclusion within its definition of generalized conduct of the kind outlined, was the intention to give a uniform quality to all juvenile misconduct, serious and minor alike. This would serve to minimize any attribution of criminality to the child's conduct and to place the emphasis, not upon the offence as such, but upon the behavioural problem of the child, who would be dealt with "not as an offender, but as one in a condition of delinquency". In this way it was thought that the Act could be made to approximate, in its effect, the juvenile court idea as embodied in the Illinois and Colorado statutes in the United States. (78).

142. The great majority of those making representations to us have recommended a narrowing of the present jurisdiction of the juvenile court, either in relation to the definition of prohibited conduct, or to the scope of the disposition powers conferred upon the juvenile court judge or, in most cases, to both. The criticisms directed at the existing provisions represent a challenge to some of the earlier thinking about the juvenile court concept. We agree with many of these criticisms. In saying this, however, we wish to emphasize that we affirm the basic philosophy of the Act to this extent: that we recognize that juveniles should be given specialized treatment and that the principle of diminished responsibility as applied to juvenile offences should be retained. We now consider some of the objections to the present jurisdictional arrangements.

143. We have referred above to the fact that the definition of "juvenile delinquent" under the Act is an extremely broad one. The prohibitions of the law are not restricted to acts having reasonably precise meanings, but purport to include as well behaviour that is described only in the most general terms. It was not, of course, accidental that the offence of "delinquency" was defined in this way. As we have attempted to show, the present definition reflects the philosophy that the Act was intended to implement. For once the idea was accepted that the intervention of the juvenile court is in a child's own interests, it is perhaps understandable that a court appearance came to be regarded as a good thing for its own sake whenever circumstances suggested that a child might be in moral danger. This justification notwithstanding, it is apparent that there are substantial objections to defining offences in this manner. A concise statement of some of the issues involved appears in a brief submitted to the Committee by the School of Social Work for the University of British Columbia:



" One of the most difficult problems is inherent in the present delineation of what constitutes juvenile delinquency under Canadian law .... The principal difficulty arises out of the fact that this legal concept goes beyond those acts proscribed for adults and includes such generalities as 'being beyond control', 'being incorrigible' 'sexual immorality' and engaging in a 'form of vice'.

These are not forms of behaviour having a specific character which might make it reasonably possible to subject allegations of such behaviour to the usual judicial tests of evidence. On the contrary these terms are purely subjective so that a finding of delinquency, based on any of these allegations, depends upon whether the Judge of the Juvenile Court can be persuaded to perceive certain forms of behaviour as being sexually immoral, or as evidence of incorrigibility or vice.

.....

Frequently charges of incorrigibility are laid either by parents or by child-caring agencies exercising guardianship over the child. Behaviour commonly giving rise to such charges consists of truancy, running away from home, and resistance to the guardian's established norms for conduct. Sexual immorality may consist of acts which are generally regarded as normal evidences of curiosity and immaturity in young persons.

Behaviour such as that cited above may be annoying to some parents, and may cause justifiable concern in some cases. At the very worst, however, this can scarcely be interpreted as a youthful form of criminal activity. Nevertheless, once a child is declared to be delinquent by the Juvenile Court he becomes subject to the full penalizing power of the Court regardless of the specific behaviour giving rise to the conviction." (79).

144. We are in essential agreement with the position as stated in the submission just quoted - although we would add that the "incorrigible" or "unmanageable" child presents special problems that will be the subject of separate comment below. A statute, especially a quasi-criminal one, should not be any more vague or ambiguous than is absolutely necessary. It is generally accepted, for example, that a criminal statute has a "fair-warning" function - that what has been called "the principle of legality" requires that offences be defined with sufficient definiteness to afford an accused fair warning of the conduct that is prohibited. (80). What kinds of conduct are, in fact, prohibited by the language of the present Act? Moreover, how can ordinary rules concerning the relevance of evidence apply? It has been well said that anything that a juvenile may be alleged to have done that would reflect badly on his character can become relevant to some of these charges. The tendency of some juvenile court judges to rely upon considerations of the child's "need" and upon the broad language of section 38 of the Act increases the danger of abuse.

145. There are still other dangers that might be mentioned. One is that a wide definition provides a vehicle for the oppressive substitution of minor offences where more serious fault is suspected but cannot be established. Another concerns police and detention practices. Where children can be charged with offences having no precise definition, the police are given a weapon of considerable proportions. While it is perhaps true that the police will ordinarily act for the protection of the children concerned, it is most doubtful whether this consideration justifies such an extension, albeit indirect, of what has been traditionally regarded as the proper scope of police powers. Misuse of detention presents a similar danger. Often the principal deprivation that a child suffers is not that imposed by the juvenile court judge, but rather the period of detention that he must endure prior to a court appearance. Broadly defined offences lend themselves to abuses of this kind. And again, it has been urged that there is an element of discrimination inherent in the operation of the "sexual immorality" clause. Studies of the juvenile court show that, for one reason or another, it is usually persons from a lower economic level who are charged with this offence. More important, perhaps, the great majority of children adjudged delinquent because of alleged sexual misconduct are girls. Indeed, some jurisdictions have set the juvenile age for girls higher than for boys in order that teen-age girls can be "protected" for a longer period of time from the consequences of their own waywardness. (81).

146. We recognize that the present definition of "juvenile delinquent" was, in large part, designed to serve a protective purpose. Nevertheless, it is our view that broad offence provisions of the kind that are now contained in the Act are justified only if there is no other reasonable means available to ensure that children are protected from moral or other danger. This is not, in our opinion, the case. Much of the type of

conduct that is brought within the existing definition is not truly anti-social; nor is it even necessarily the antecedent of anti-social conduct in the adult. We do not deny the importance of dealing with behavioural problems early. What we question is the means adopted to achieve this result. For the method of the criminal law, at least when employed in relation to any sensitive area of activity, involves an implied characterization of conduct as anti-social. The effect of this is to stigmatize the person in respect of whom the criminal process is invoked and to subject him to disabilities that are alien to, or subversive of, any protective purpose that might in fact be the object of a proceeding. While the Act provides for a substantial modification of the traditional criminal process, these disadvantages are not, nor can they be, entirely removed. We think it a sound proposition to assert, therefore, that as a matter of public policy quasi-criminal legislation should not be used to achieve welfare purposes if those purposes can be achieved by non-criminal legislation. To this end we recommend that children be charged only with specific offences as is the case in proceedings against adults, and that any provisions in the law that are inconsistent with this principle be repealed.

147. Another serious criticism that is made of the existing law concerns what is perhaps its most characteristic feature: the fact that the Act creates one single offence embracing, with potentially like consequences, all forms of prohibited conduct for children. The concept of the "juvenile delinquent" represents, among other things, the means by which this arrangement is given expression. The objection to this approach is well stated in a brief submitted by the Canadian Corrections Association:

" The present Act created an inclusive new offence called delinquency which was unknown to the common law. No matter what action brings a child before the juvenile court he is on conviction found guilty of having committed a delinquency. No legal distinction is made between the child involved in a serious offence such as armed robbery and one involved in an infraction of a by-law, such as driving a bicycle without a licence.

.....

....We believe that the power the court may exercise over the convicted child should bear some relationship to his offence, so that a child who has committed only an infraction of a municipal by-law cannot be taken from his parents or sent to training school." (82).

148. Once again we think it important to recognize the reason why "delinquency" was defined in this way. It seems clearly to have been



intended, through the concept of the "juvenile delinquent", to give a uniform quality to all juvenile misconduct, serious and minor alike, in order to further the general objectives of the Act. Those objectives were to minimize any attribution of criminality to a child's conduct and to focus attention, not upon the offence as such, but upon the underlying behavioural problem that gave rise to it. To put the matter differently, the existing provisions carry to its logical conclusion the principle that treatment must suit the offender, not the offence. It is now apparent that a competing interest of public policy, namely, the protection of the individual against undue interference by the state requires some limitation upon the unrestricted application of this principle, and that a change in the law is indicated.

149. We have discussed earlier the reasons why we consider that the term "juvenile delinquent" should be abandoned for purposes of legal characterization. In its place we propose that the designations "child offender" and "young offender" be adopted. These terms are explained in more detail below. It is sufficient to note here that special terminology is retained as a means of distinguishing between two degrees of offences. Under our proposals, an accused would be subject to a finding that he is a "child offender" or "young offender" only where his offence is serious enough to warrant a major interference in his life, that is, removal from the parental home or committal to a training school. A number of suggestions were made to the Committee concerning an appropriate basis for differentiating between degrees of offences. The matter is difficult and we know of no solution that is not open to some objection. After great deliberation, we have concluded that the most satisfactory arrangement is one that would permit a finding that an accused is a "child offender" or "young offender" only where he has committed an offence that constitutes a violation of the Criminal Code or of such provisions of other federal or provincial statutes as are from time to time designated by the Governor in Council. Any other offence, whether against a federal or provincial statute, a municipal by-law, or a regulation or ordinance, would be considered an offence of lesser degree, to be known as a "violation". We contemplate that young persons charged with lesser offences would, with certain exceptions that we shall mention, continue to be subject to the jurisdiction of the juvenile court - and further, that the provisions of the federal Act would continue to apply. In the case of a lesser offence, however, it would not be open to the juvenile court to commit an offender to a training school or, unless there is parental consent, to remove him from the parental home. If intervention of a more substantial nature is required than is authorized under the federal Act, we think it preferable that proceedings be brought under the appropriate provincial legislation relating to children in need of care or protection or to the group now variously described as incorrigible, unmanageable or beyond the control of a parent or guardian.

150. A further word should be said about our use of the terms "child offender" and "young offender". The distinction has reference, in part, to

a more general recommendation that, within the total age range of juvenile court jurisdiction, there should be a division for certain limited purposes at the age of fourteen. We have suggested elsewhere the possibility that the minimum age of juvenile court jurisdiction could be flexible to this extent: that it might be expressly recognized that any province may make whatever arrangements it wishes for children up to the age of fourteen, including the enactment of legislation making the federal Act inapplicable to children under the designated age. Relevant also in this connection are our proposals that certain provisions of the Act, notably those relating to the power to impose a fine, to make an order of restitution, or to waive jurisdiction in favour of the ordinary courts, should have application only in respect of the "young offender", and not the "child offender". A division at the age of fourteen has the additional advantage that young persons aged fourteen or more usually do not regard themselves as "children", and often resent being referred to as such. The statute should make clear that a finding that a person is a "child offender" or "young offender" is not to be regarded as a conviction for a "criminal offence" for the purpose of determining whether a person has a previous conviction or is otherwise subject to disabilities by reason of conviction for a criminal offence.

151. The matter of lesser offences requires further comment. We have noted earlier that all charges against children must, as the law now stands, be brought under the Act if the Act is in force in the particular jurisdiction. This has created a number of difficulties in regard to lesser offences, particularly those involving routine by-law infractions. One difficulty relates to a question that we have considered earlier, that is, the fact that there is often a reluctance on the part of the authorities to have a child branded a "juvenile delinquent" in order to enforce minor provisions of the law. Another problem is an administrative one. In proceedings under the Act it is necessary, even in the case of a simple parking violation, to comply with the requirement in section 10 that "notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child ...". It is the juvenile traffic offender who has presented the greatest difficulty, especially in provinces where the juvenile age is eighteen. Some jurisdictions have in fact already made special arrangements to permit juvenile traffic cases to be brought before the ordinary courts, purporting to find the required authority in section 39 of the Juvenile Delinquents Act. (83). We deal first with the problem of the juvenile traffic offender.

152. The manner in which juvenile traffic cases should be processed has been often canvassed in inquiries into the operation of the juvenile courts. (84). It seems to be the consensus among those who have studied the matter that the juvenile court should retain a substantial measure of control over these cases. The Governor's Special Study Commission on Juvenile Justice in California, for example, noted the following objections to transferring such cases to the ordinary courts: (a) the fact that, where juvenile cases are heard

in the regular courts without the knowledge of parents, this tends to undermine parental supervision and to interfere with the ability of parents to assist in controlling juvenile offenders; (b) the fact that many adult traffic courts function solely on an impersonal, payment-of-fine basis, which engenders a lack of respect for the courts; and (c) the fact that a better educational approach is afforded by the juvenile court process. (85). Noting that many have expressed the opinion that these cases should be handled in the regular traffic courts, the Commission observed:

" Should this expedient ever be adopted, we feel that adequate provision should be made for the transfer to the juvenile court of cases of juveniles involved in serious traffic offenses, cases where there is a history of repeated moving violations, and cases where a jail sentence would otherwise be appropriate. An avenue should also be open whereby a traffic court could transfer to juvenile court any juvenile who exhibits a serious behaviour problem, regardless of the nature of the traffic offense. " (86).

153. Recognizing that the juvenile traffic offender does represent a special problem, some jurisdictions have attempted to streamline the juvenile court process in order to deal more effectively with this kind of case. Thus, the California Commission concluded by recommending that jurisdiction over juvenile traffic offenders should be retained in the juvenile court, but that the court should be given the power to appoint traffic hearing officers who might make final judgments on the basis of a summons alone in all juvenile traffic cases, except those considered serious enough to warrant a full hearing in the juvenile court. (87). The draft Standard Juvenile Court Act, representing the majority view of experts in the United States, takes a position very similar to that approved in California. It provides, in part, that the juvenile court is authorized to establish, by rules of court, "appropriate special provisions for hearings in cases of violation of traffic laws or ordinances". (88). The Minnesota Juvenile Court Code creates the separate category of "juvenile traffic offender" and confers special disposition powers upon the court in respect of this group. The Judge may reprimand the "juvenile traffic offender", restrict his use of an automobile, require him to attend a drivers' school, or enter an order suspending or revoking his licence to drive. In more serious cases "delinquency" proceedings can be brought in the usual manner. (89). Still another approach has been adopted in Oregon, where a special provision has been included in the juvenile court statute, as follows:

" The juvenile court may enter an order directing that all cases involving violation of law or ordinance relating to the use or operation of a motor vehicle



be remanded to criminal or municipal court,  
subject to the following conditions:

- (a) That the criminal or municipal court prior to hearing a case, other than a case involving a parking violation, in which the defendant is or appears to be under 18 years of age, notify the juvenile court of the fact; and
- (b) That the juvenile court may direct that any such case be remanded to the juvenile court for further proceedings." (90).

154. We have stated elsewhere that it is our opinion that the Act should continue to apply, as at present, to all offences committed by children and young persons, regardless of whether the offence is against a federal statute, a provincial statute or a municipal by-law. We think that, having regard to the need to ensure a consistent philosophy in dealing with juvenile offenders and to the advantages in simplicity and uniformity in the interpretation and application of the law, this is preferable to a system that might, among other things, have the effect of subjecting juvenile offenders to the same penalties as adults under the statutes or by-laws contravened. Nevertheless, we think it desirable, in so far as juvenile traffic offences are concerned, that the law be altered with a view to achieving the kind of flexibility suggested by the various approaches outlined in the preceding paragraph. The initial premise should be that, where practicable, juvenile traffic cases, excepting perhaps those that do not involve operation of a vehicle, should be heard in the juvenile court. One difficulty is that juvenile courts serving sparsely populated areas may not be able to deal efficiently with many such offences. For this reason the section in the Oregon statute probably serves as the most useful model for a provision defining generally the basis of juvenile court jurisdiction. In larger communities the juvenile courts should be able to handle most juvenile traffic offenders. Here too, however, special provisions would seem to be in order. Many juvenile traffic offenders do not require the specialized attention of the juvenile court and, as the Canadian Corrections Association has observed, "putting this burden on the children's court might divert it from its primary purpose." (91). We think that the juvenile court judge should be authorized, through rules of court, to make special arrangements (that is, separate hearings by a designated officer, dispensing with written notice to parents, and the like) for dealing with more routine kinds of cases. A specific recommendation relating to the matter of rules of court is set out later. We would suggest also that the disposition provisions of the Act should perhaps be amended to indicate more specifically the powers of the juvenile court judge in juvenile traffic cases. Included would be the power to impose

restrictions on the use of an automobile, to order suspension or revocation of a driving licence and possibly to order attendance at a drivers' school. Care should be taken, in any review of the law, to ensure that adequate provision is made for implementing provincial legislation relating to the assessing of demerit points and to the suspension or revocation of a licence to drive upon conviction of a driving offence or accumulation of a specified number of demerit points.

155. We have mentioned a second difficulty in regard to lesser offences, namely, the reluctance expressed about having a child branded a "juvenile delinquent" in order to enforce a minor provision of the law. Because of this, there have been suggestions that lesser offences should be excluded from the reach of the federal statute. It is important to note that the concern of most of those who have recommended this change is not so much with removing lesser offences from the jurisdiction of the juvenile court as it is with limiting the definition of "delinquency". Under most such proposals, proceedings in respect of minor offences would continue to be brought in the juvenile court, but pursuant to provincial legislation. We think that the objection to the existing law can largely be met by distinguishing between two degrees of offences within the framework of the Act. There is, in our view, a distinct advantage in having all offences involving children and young persons dealt with, as at present, under one statute. Our proposals, as set out above, reflect this basic judgement.

156. There is one further point relating to minor offences that requires comment. The Canadian Corrections Association has recommended that, in order to avoid giving a child a court record, an attempt should be made to find "ways other than the juvenile court to deal with children who have committed such offences as infractions of municipal by-laws..."(92). We note, for example, that in Regina the police conduct what is called a "bicycle court" - an informal hearing at which the child appears voluntarily, although he is advised that the matter could be transferred to the juvenile court. The child is given instruction, warned and sent home. (93). If procedures of this kind are to be employed - and we recognize that they may well serve a useful purpose - they should, in our view, be subject to the approval and direction of the juvenile court judge. We think that the requisite control can be provided through rules of court.

157. One of the most difficult questions that the matter of offence jurisdiction presents concerns the group variously described as incorrigible, unmanageable, beyond the control of a parent or guardian, or in moral danger. The definition of "juvenile delinquent" under the Act does not refer specifically to this category of "offender". However, provisions relating to these children are contained in the statutes of most provinces. In Newfoundland, where the Act is not in force, the Welfare of Children Act defines a "juvenile delinquent" to include any child "who is represented as being

beyond parental control . . . or who notwithstanding that he has been enrolled at a school according to law, wilfully refuses to attend . . .". (94). In Ontario, under the Training School Act, it has been possible to send a child to a training school if he "proves unmanageable". (95). Of 1,110 children committed to training schools in Ontario in 1961, some 503 were committed pursuant to this provision. (96). Similarly, in British Columbia we were told that approximately one-half of the girls sent to the Willingdon School for Girls were committed as "incorrigible" under what was formerly the Industrial School for Girls Act. (97). Committal to a training school is, so far as the Juvenile Delinquents Act is concerned, the ultimate sanction or treatment measure. Extensive use of provisions of this kind in provincial statutes has, therefore, considerable relevance to any discussion of the offence provisions of the federal Act. Indeed, the situation seems to be an anomalous one. We have noted that a basic criticism of the federal Act is that it permits a child to be sent to a training school in respect of any conduct for which he can be adjudged delinquent, including a simple by-law infraction. And yet, to attempt to remove this objection by limiting the disposition powers of the juvenile court under the federal statute leaves a further aspect of the problem wholly untouched, that is, the fact that children may be subject to committal or admission to training schools on entirely unrelated grounds under provincial legislation.

158. These provisions in provincial statutes are relevant to the definition of offences under the federal Act in still another way. We have pointed out how the present Act operates in combination with provincial legislation by means of a kind of incorporation by reference. The question that has to be asked is whether incorrigibility and such related "offences" come within the definition of "juvenile delinquent" as it is set out in the federal Act. In British Columbia the answer is clear, because the provincial statute states specifically that "upon complaint and due proof made to a Judge of the Family and Children's Court . . . that by reason of unmanageable conduct the child is beyond the control of his parents or guardian, the Judge . . . may deal with the child in the manner prescribed in the Juvenile Delinquents Act of Canada." (98). Does, however, incorrigible or vicious conduct under the Manitoba statute, (99), or similar conduct under the New Brunswick statute, (100), come within the meaning of the language in section 2 of the Juvenile Delinquents Act that defines "juvenile delinquent" to include any child "who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute"? What is the effect of other words in the definition of "juvenile delinquent" that speak of a child "who violates any provision . . . of any . . . provincial statute . . ."? We suggest that revision of the federal Act should involve deletion of the part of the definition quoted in the first of these questions, and clarification of the part of the definition quoted in the second question. However, the policy issue



still remains. Should incorrigibility, unmanageability, and similar kinds of conduct be brought, as a number of persons have proposed, within the scope of the offence provisions of the federal statute? We think not.

159.

The principal reason why it might be considered desirable to bring the problem of the incorrigible or unmanageable child under the Act is that it would then be possible to deal comprehensively, in one statute, with all of the kinds of situations in which committal to a training school may be necessary or desirable. It seems to be inevitable that, in the absence of alternative facilities, the training schools will continue to have to accommodate many of this group for some time to come. While it is clear, of course, that a province may make whatever use that it wishes of its own institutions, the suggestion is that bringing these persons within the offence provisions of the federal statute would tend to promote consistency in the matter of training school committals, for two reasons. First, there would be a standard definition of what constitutes incorrigible or unmanageable behaviour, and also - and this has reference to an alleged defect in the legislation of at least one province (101) - there would be standard provisions concerning the circumstances in which the law can be invoked. Second, it would seem reasonable to hope that, with the policy in regard to this particularly difficult type of case clearly defined, the provinces would be encouraged to restrict training school admissions to cases where children or young persons have been committed pursuant to the federal Act. This, it is thought, would help to bring to an end what many, including those responsible for drafting the Standard Juvenile Court Act in the United States, consider to be an objectionable practice, namely the indiscriminate mingling within one institution of "delinquent", "neglected" and "dependent" children. (102).

160.

The objections to dealing with incorrigibility or unmanageability under the federal statute are, however, substantial. Most authorities agree that these children are not so much at war with the community as with their parents or themselves. One study found, for example, that many of the instances of parental referral to the juvenile court involved unfit parents whose children had been reported as "unmanageable" when, in fact, the parents had sought to impose irrational or excessive discipline. (103). Often, therefore, it may not be at all clear whether a child is "unmanageable", or simply not properly managed. In such circumstances, asking him to answer before a court to a formal charge would seem to be a questionable method of dealing with the kind of problem that is presented for solution, a problem that is more in the nature of a welfare matter than one involving anti-social behaviour in the usual sense. Moreover, in this kind of case it would seem to be desirable to have the parent or guardian brought into a more central position in the inquiry than is possible where a formal charge forms the basis of the court's jurisdiction. We call attention again to our conclusion, previously expressed, that quasi-criminal legislation should not be used to achieve welfare purposes if those purposes can be achieved by non-criminal

legislation. These comments, we would add, do not exhaust the objections that can be made to incorrigibility, and such similar concepts, as offence categories. (104). In sum, it is our view that the method of the criminal law, even as modified in proceedings under the federal Act, is not an appropriate means for dealing with the special problem of the incorrigible or unmanageable child.

161. The Committee has given consideration to each of several approaches that have been suggested for dealing with incorrigibility. (105). It seems to be clear that, as a constitutional matter, a procedure that would make adequate provision for this kind of case can be enacted only by the provincial legislatures. However, it is possible to structure the federal Act in a way that will permit Dominion and provincial legislation to be employed jointly towards a common purpose. We consider this aspect of the question in the context of our discussion of the disposition process. (106). Having regard to the interrelationship between "delinquency" and "incorrigibility" and to the desirability of establishing a uniform and consistent philosophy in relation to this entire problem, we venture to outline an approach that might be considered a suitable legislative response to the kinds of situations to which the concept of incorrigibility is addressed. In doing so we emphasize again that, in the last analysis, it is for the provincial authorities to decide what, if any, course of action is called for. We think that an appropriate procedure might embody the following general principles:

- (1) The proceeding should not be commenced by a charge against the child, as is now the case. In our view a procedure along the lines suggested by the Ingleby Committee in England seems most appropriate (107) - more so, in fact, than the American practice of commencing proceedings by way of petition. Under the procedure proposed a summons would go to the parents (or the guardian) requiring them to attend at the court and bring the child with them. This has the further advantage that the parents would be joined as parties to the proceeding.
- (2) The terms "incorrigible" and "unmanageable" should be abandoned. To some extent they are subject to the same objection as the term "juvenile delinquent", in that they tend to "label" a child unnecessarily. In any event, the terms are often misnomers. A child may not be "incorrigible" or "unmanageable" at all, but rather, uncorrected or unmanaged by reason of ineffective controls. Some new

designation should be adopted for children of this kind. Either a child or young person "in need of protection or discipline", as proposed by the Ingleby Committee, (108) or a "person in need of supervision", (109), the designation employed in the new Family Court Act of New York, would appear to be acceptable.

- (3) As far as possible a standard should be adopted that indicates, without undue ambiguity, the considerations that are relevant to support court action and that gives fair indication of the conduct to which legal consequences do, in fact, attach. The statute should make it clear that a child may be found to be "in need of protection or discipline", or a "person in need of supervision", only where there is a clear indication that his behaviour is persistent in nature. (110).
- (4) The legislation should provide that committal to a training school may be ordered only as a last resort. Moreover, an attempt should be made to develop facilities other than training schools for this group. (111). Of particular importance in this regard are group foster homes, because the "unmanageable" child is often one who, although unsuitable for placement in a foster home, could nevertheless function quite adequately in the less demanding atmosphere of a group foster home.
- (5) It should be part of any such scheme that admission or committal to a training school should be possible only in the case of a child or young person committed pursuant to the federal Act, or found, under the appropriate provincial legislation, to be "in need of protection or discipline" or "in need of supervision". Neglected and dependent children should not, in other words, be placed in institutions intended primarily for the care and treatment of these other groups.

162. Relevant also to the discussion of offence jurisdiction are our recommendations in regard to the relationship between the federal Act



and child welfare legislation of the provinces, the disposition process, rules of court and jurisdiction over adults. We deal with these matters elsewhere. (112).

### Waiver of Jurisdiction

163. Notwithstanding a general acceptance of the juvenile court approach to the problem of the juvenile offender, legislators have been unwilling, as any review of juvenile court statutes makes plain, to exempt all offenders under the juvenile age from criminal prosecution in the ordinary courts. Various techniques have been employed for sorting out those who are thought to be inappropriate subjects for the juvenile court process. With few exceptions, these techniques have applied only to older juveniles. In some places jurisdiction is withheld from the juvenile court in respect of certain kinds of offences, notably those punishable by death, life imprisonment or other serious penalty. In others the juvenile court and the criminal courts are given concurrent jurisdiction over certain of the more serious offences, with a discretion left to the prosecutor to make the initial determination as to the manner in which any individual case will proceed. Some jurisdictions permit the child himself to waive the benefit of a juvenile court hearing and to insist upon trial in the ordinary criminal courts. Under still another system the criminal court has the power to refer certain offenders to the juvenile court or to deal with them in the criminal court under some or all of the provisions of the juvenile court law. However, the most usual arrangement - and the one that has been preferred by most students of the juvenile court movement - is to give to the juvenile court exclusive original jurisdiction over all offences committed by persons under the juvenile age, but to add a provision making it possible for the juvenile court to waive jurisdiction in favour of the ordinary criminal courts in any appropriate case. It is this last mentioned technique that is employed in the Juvenile Delinquents Act. Section 9 provides, in part, as follows:

"Where the act complained of is...an indictable offence, and the accused child is apparently or actually over the age of fourteen years, the Court may, in its discretion, order the child to be proceeded against by indictment in the ordinary courts in accordance with the provisions of the Criminal Code in that behalf; but such course shall in no case be followed unless the Court is of the opinion that the good of the child and the interest of the Community demand it."

164. A number of suggestions have been made for changes in the law relating to waiver of jurisdiction, most notably the following:

that the practice of waiver should be eliminated; that certain classes of case should go initially to the ordinary criminal court which could refer any such case to the juvenile court; that the decision on whether a matter is brought before the juvenile court or the criminal court should rest with the crown attorney rather than the juvenile court judge. In the paragraphs that follow we consider the operation of the waiver provisions and outline a number of proposed changes in the law. We leave the second and third of the suggestions listed to the appropriate point in that discussion. A word should be said initially, however, about the first. We are unable to accept the suggestion that there are no cases within the age range of juvenile court jurisdiction that should not be brought, by one means or another, before the ordinary criminal courts. There are situations in which it is clear that the juvenile court and its powers of disposition are inadequate. (113). It is not sufficient to say, as some have done, that the juvenile court approach can always succeed where adequate resources are provided, and that there are no "untreatable" offenders as such. (114). We think it important to recognize, as even enthusiastic proponents of the juvenile court idea have done, that a not inconsiderable percentage of young offenders will continue to prove unresponsive to the rehabilitative efforts of the juvenile court, however extensive may be the resources placed at its disposal. (115). For there are, in fact, problems associated with some juvenile misconduct that are beyond the power of any court to solve. Nor, as we shall suggest, is "treatment" the only value in issue in this jurisdictional "sorting out" process. With any raising of the juvenile age the need for some such procedure becomes even more evident, because of the greater number of persons appearing in juvenile court who have been involved in serious offences. Doubt has been expressed whether the emphasis on individual rehabilitation that characterizes the juvenile court approach could be retained in the face of the challenge that a large number of dangerous offenders would pose to the juvenile court and its attendant services. Our recommendation for a juvenile age of seventeen, which is based in part upon this very consideration, does represent, nevertheless, an increase in the juvenile age limit for six of the provinces.

165. Under the Act the decision whether or not to waive jurisdiction is one that is largely within the discretion of the juvenile court judge. The most basic problem presented by the waiver process - as with any of the "sorting out" techniques listed - concerns the criteria that should govern the discretion that is exercised. Section 9 is explicit in denying to the juvenile court judge the power to waive jurisdiction unless two objective criteria are both satisfied: that the accused child is apparently or actually over the age of fourteen years and that the act complained of is an indictable offence. In addition the section requires that the judge make a "finding" in terms of two subjective criteria: that "the good of the child" and "the interest of the community" demand waiver. The difficulty is that these subjective tests are not explicit enough to indicate the kinds of situations that the designated "finding" are intended to include. How, in fact, are the "good of the child" and "the interest of the community" to be assessed? Indeed, to what extent

are these separate criteria even compatible? It is clear that, for a guide to decision based on principle, the judge must look beyond section 9 to extrinsic considerations of policy. The danger is that, without the direction and assurance that reasonably firm legislative guides provide, waiver of jurisdiction will tend to become an expression, not of any consistent policy, but of the predilections of individual juvenile court judges or of local pressures upon them. Since the decisions of juvenile court judges are rarely published, and since appeals are few, our information concerning the circumstances in which waiver is invoked are fragmentary at best. Nevertheless, it was evident to the Committee from its discussions, and from a review of the literature(116), that there is much uncertainty in regard to the purpose of waiver - an uncertainty that is probably reflected in the variations in juvenile court practice that appear to exist across the country. In the interest of consistency in the administration of the waiver provisions, therefore, it would seem desirable that the Act be amended to give more adequate guidance than the present wording of section 9 provides.

166. Of the cases in which jurisdiction has been waived by the juvenile court, those that have attracted most public attention have involved offences of some substantial degree of seriousness. The criterion of "seriousness", therefore, has figured prominently in discussions of policy concerning waiver. The assumption on which this criterion rests is that the nature of an offence, as defined by law, itself indicates that the accused child is particularly vicious or hardened, and hence an unsuitable subject for the juvenile court process. The problem with any test for waiver that focuses on the character of the offence, without more, is that it is especially difficult to reconcile this test with the stated objectives of the juvenile court concept. For the idea of "individualized justice", which lies at the heart of the juvenile court approach, carries with it, as possibly its most essential element, the implication that a child should be dealt with according to his needs, rather than be subjected to punitive measures proportionate to the nature of the offence. Certainly it does not follow from the fact alone that an offence is one that the law regards as particularly heinous, including on occasion even murder or rape, than an offender is not amenable to the treatment approach of the juvenile court, however much public sentiment may be aroused. Indeed, the preferable inference may sometimes be quite the opposite. As the Superior Court of Pennsylvania has observed: "There is as much, if not more, reason for applying the (juvenile court) law to such a child . . . , (one charged with homicide) . . . as to one whose delinquency arises from less serious violations." (117). This is not to say, of course, that the seriousness of the offence is not a matter to be given great weight in considering whether waiver is indicated.

167. There may be very good reason, on the other hand, why the hearing of a charge against a juvenile should sometimes take place before the ordinary courts, regardless of the disposition that might be considered appropriate after the charge has been proved. Appellate courts in Canada have tended to view waiver from this trial perspective, questioning the adequacy



of the juvenile court as a forum for the trial of cases that have attracted wide public attention or that involve difficult, contested issues of fact. In such circumstances both the interest of the community and the good of the child have been held to justify trial in the regular criminal courts. Thus in one leading case, which involved a charge of murder, the Manitoba Court of King's Bench concluded: "the interests of the community demand . . . that the juvenile be given a fair trial. To that end the community have a right to know how that trial is conducted; they do know that such a trial is ensured in the ordinary courts (King's Bench, with the right of appeal), but they cannot know that it will be in the Juvenile Court, where procedure is undefined or not settled, where the trial is in camera, where the Judge interrogates the accused, and where there is no benefit of jury or anything corresponding to that ancient safeguard." (118). Similarly, in another case, where again the charge was murder, a Justice of the Ontario High Court observed that "notwithstanding the publicity and strain of a trial it is my opinion that it would be for the good of a child to have his position in respect to such a serious charge established by a jury which would remove any possible criticism of having such a serious matter determined by a single Judge in camera proceedings." (119). The difficulty with this approach to waiver, however, is that it secures the advantage of trial in the regular courts at the expense of subjecting the child, upon conviction, to the full penalties of the criminal law. Once again, it does not follow from the fact that the public interest requires trial in the ordinary courts that the child is not a suitable subject to be dealt with, for disposition purposes, under the juvenile court law. The problem is that the inflexibility of the existing waiver provisions forces a choice between what is desirable as a forum for the trial and what is desirable by way of treatment for the child.

168. In order to make the waiver process sufficiently flexible to give scope to these competing policy interests we propose that the Act be amended to provide two alternative techniques for bringing cases before the ordinary courts. The first would be essentially the procedure that now exists under section 9. The juvenile would be subject to prosecution in the ordinary criminal courts in the same manner, and with the same consequences, as if he were an adult. Because the objectives of the juvenile court process are conceived in what can broadly be called "treatment" terms, we think that the determination concerning who is and who is not an appropriate subject to be dealt with in the juvenile court should focus on the question of "treatment" potential. The juvenile court judge is the person pre-eminently suited to make this decision. We thus endorse the basic principle of section 9 - that the decision on the matter of waiver of jurisdiction should rest exclusively with the juvenile court judge. To indicate more clearly the purpose of waiver, in the sense contemplated by section 9, we recommend that there be incorporated in the Act a statutory test for waiver that addresses itself to the "treatment" issue. A formulation prepared by the United States Children's Bureau seems to us to be the most satisfactory test that has been suggested. Essentially, it permits waiver only where there is a specific finding that the

young person is not subject to committal to an institution for the mentally deficient or mentally ill, that he is not suitable for treatment in any available institution or facility designed for the care and treatment of young persons, or that the safety of the community requires that the offender continue under restraint for a period longer than the juvenile court is authorized to order. (120). We recommend that a test along these lines be adopted. In addition we propose that provision be made in the Act for a new procedure modelled after the waiver section in the newly revised juvenile court legislation of the State of Kansas. The Kansas law provides that a case can be referred to the ordinary courts for trial and, upon proof of the allegations against the young person, the case is then remanded to the juvenile court for disposition. (121). A supplemental procedure of this kind offers, we think, a means of accommodating the various objectives that the waiver process might reasonably be expected to serve.

169. Such a procedure would have a number of advantages. One relates to suggestions, noted earlier, that the decision as to whether a matter is to be dealt with in the juvenile court or the criminal court should rest, not with the juvenile court judge, but with the crown attorney (122) or, in some cases, with a judge of the criminal court. The present philosophy of the Act is to prefer the juvenile court process to that of the adult court. The juvenile court judge, by reason of his qualifications and experience, should be better able than the crown attorney or a judge of the criminal court to assess whether a young offender is suitable for treatment in a juvenile institution or is otherwise amenable to the treatment approach of the juvenile court. He may not, however, be as qualified as the representatives of the Crown to know whether the interest of the community requires a public hearing in the ordinary criminal courts. While we recognize that there may be "treatment" implications to the type of hearing that is held we think that, where the Attorney General is of the opinion that the public interest does require a public trial, this interest, as so determined, should be given priority. The new procedure would provide a means of striking a balance in relation to these sometimes conflicting policy issues. Under the proposed procedure it would be open to the Attorney General, either directly or after a refusal by the juvenile court judge to waive jurisdiction, to order that the trial of any charge take place in the ordinary courts. The matter would then be referred to the adult court for hearing. Upon proof of the offence the case would be returned to the juvenile court for the purposes of disposition - that is, for what in the adult court would be sentence.

170. Another advantage to a supplemental procedure of this kind concerns the position of the juvenile court judge. For any one of several reasons a juvenile court judge may himself wish to have a particular case dealt with, for adjudication purposes, in the ordinary courts. It may be that the matter is one that has received a great deal of public attention. Law enforcement authorities may have exerted pressure upon him to waive jurisdiction. Possibly the case is a contested one involving difficult questions of law or fact.

Presumably juvenile court judges would be guided, in part, by the advice of higher courts, which might be expected to indicate the kinds of cases that should be sent to the adult courts under the proposed provision.

171. Whether or not a young person should himself be entitled to insist upon trial in the ordinary courts is a question that, to some extent, has been controversial. Most American jurisdictions have taken the position that he should not. The assumption has been that no such right is necessary because the juvenile court exists for the protection of the young person and, in any event, knows better than the juvenile himself where his best interests lie. In England, on the other hand, a young person over the age of fourteen has the right to be tried by a jury for any indictable offence and for certain summary offences. (124). We think that a young person should have the right to insist upon trial in the ordinary courts and, further, that he should not have to incur the risk of subjecting himself to the full penalties of the criminal law in order to exercise that right. This would be possible for him under the procedure that we have proposed.

172. One further advantage under this new procedure might be noted. This concerns the matter of joint trials. Waiver is sometimes sought because there are a number of offenders, of whom several are adults, and the Crown wishes to proceed against all in one trial. This, of itself, is not a sufficient justification for waiver. It would not be inappropriate, however, to transfer such a case to the ordinary courts if the disposition provisions of the juvenile court statute continued to apply.

173. In our earlier discussion of section 9 we pointed out that two objective criteria must be satisfied before a juvenile court judge may waive jurisdiction. The accused child must be apparently or actually over the age of fourteen years and the act complained of must be an indictable offence. Some jurisdictions have raised this minimum age for waiver to sixteen. We think, however, that the present age of fourteen should be retained. The requirement that the act complained of be an indictable offence, on the other hand, has given rise to some difficulty. It sometimes happens that the juvenile court has before it a young person who is charged in respect of an act that does not constitute an indictable offence, but who has been sent to a training school before, possibly on more than one occasion, or who has been the subject of a waiver order on a previous appearance in juvenile court. In either of these situations it may be inappropriate to deal with the offender further in the juvenile court. Moreover, there is evidence that law enforcement authorities sometimes bring a serious charge, where otherwise they would have regarded a lesser charge as sufficient, in order to lay a basis for an application to have the offender transferred to the ordinary criminal courts. (125). We recognize - indeed, we emphasize - that it is important that there be restrictions on the use of waiver. We doubt, however, that this particular restriction is necessary. Accordingly, we recommend that the Act be amended to remove the requirement that the offence be indictable



and suggest that waiver of jurisdiction be permitted in any case where the allegation is one that would, if proved, support a finding that the accused is a young offender. We recommend also that this more limited restriction, together with the other objective requirement that the accused be of the age of fourteen, apply to the two alternative procedures that we have outlined for bringing cases before the ordinary courts.

174. It is not possible for us to comment here in any detail on the waiver hearing as such. There are, however, several observations that we wish to make. First, we suggest that the Act should be amended to provide that the juvenile court judge, when satisfied on the evidence taken at the waiver hearing that there is a reasonably strong case against the young person, be authorized to order any social investigation, or medical, psychological or psychiatric examinations that he feels are necessary or desirable. A provision of this kind is contained in the juvenile court statutes of a number of jurisdictions. (126). It is our opinion that this authorization is necessary if the judge is to make an adequate determination in terms of the "treatment" criteria that we have proposed for the waiver procedure. If the judge decides not to waive jurisdiction and the young person contests the charge, the fact that there has been an inquiry into background information would require the judge to relinquish jurisdiction in favour of another juvenile court judge. This is already the case, however, under existing law. (127).

175. We think also that more adequate controls should be written into the waiver provision to guide and limit juvenile court judges in the exercise of their discretion concerning waiver. Waiver of jurisdiction is intended to be an exceptional measure. It is important, therefore, that there should be means for ensuring its proper use. We recommend that the Act be amended to provide specifically that waiver may be ordered only after a full investigation into the background of the accused and the circumstances of the offence. We propose that the juvenile court judge be required to give written reasons for his decision and to forward them to the criminal court with the order transferring jurisdiction. Finally, we suggest that there should be a requirement that notice of a waiver hearing be served on the parent or guardian of the young person. We deal further with the matter of notice to parents later in our Report. (128).

176. One further problem that has arisen in connection with waiver of jurisdiction should be noted. The Act contains a provision that permits a juvenile court judge to find a child delinquent, deal with him in any of the ways provided for by the disposition provisions of the Act, and subsequently, in the exercise of a supervisory jurisdiction continuing until the age of twenty-one, cause him to be brought back before the court for further disposition. (129). This further disposition may include a waiver order pursuant to section 9. In other words, a juvenile court judge may direct that a young person be referred to the ordinary criminal courts for

prosecution in respect of the very matter for which he has been found delinquent and subjected to treatment or corrective measures by the juvenile court. (130). One would expect that a provision such as this would have been considered objectionable on the ground that no person should be placed in jeopardy more than once for the same offence. Here again the Act reflects its American origins. It was assumed by those drafting American juvenile court statutes that, because a juvenile court proceeding was civil rather than criminal in nature – and because its purpose was to protect a child and not to punish him – no problem of "double jeopardy" was really involved. The fallacy of this reasoning has been recognized by a number of commentators in the United States. (131). In our opinion there can be no justification for such a procedure under our law. We recommend, therefore, that this provision in the Act be deleted.

177. Before leaving the matter of waiver of jurisdiction we wish to comment on its relation to the problem of selecting an appropriate upper age limit for juvenile court jurisdiction. A number of persons have suggested that waiver can serve as a means of securing the advantage of a flexible juvenile age. Their reasoning is along the following lines. The juvenile court concept recognizes that younger offenders should not be held accountable for their conduct in the same way as adults. At what age, then, can young persons properly be regarded as responsible in the full sense? Much of the discussion of this matter has focused on the question of maturity. One difficulty is, however, that children mature at different rates, so that from this point of view no fixed age is entirely satisfactory. Accordingly, it is argued that the juvenile age should be set reasonably high, leaving it to the juvenile court to sort out through the waiver process those offenders who, by reason of their relative maturity, should not be dealt with as juveniles. Waiver is thus seen as a device to be used actively to control the kinds of cases coming before the juvenile court. Its object, on this view, becomes one of preserving the court as a forum specialized to the problems of children and of ensuring that those who are not children are not treated as such.

178. It was evident to the Committee from its discussions that juvenile court judges in Canada do not conceive this to be the function of waiver. We think – and California experience seems to demonstrate – that any attempt to legislate a principle of self-restraint in this way has little chance of success. (132). Waiver is, and is likely to remain, an exceptional procedure. We doubt its value, therefore, as a means of effecting a compromise, over any substantial age range, in regard to the selection of an appropriate upper age limit of juvenile court jurisdiction. This judgment has been one among a number of considerations that has led us to propose that the juvenile age be established at seventeen.

179. Other "sorting out" techniques that might be employed are not open to this same objection. We note that the Archambault Commission,

while indicating a strong preference for a juvenile age of sixteen, recommended "that legal provision should be made to permit the judge or magistrate who is trying an offender between the ages of sixteen and eighteen, if he considers the accused to be a young person who might to his advantage be dealt with in the juvenile court, to deal with him according to the powers conferred under the provisions of the Juvenile Delinquents Act." (133). There have been suggestions also that the crown attorney might be allowed to bring proceedings in the juvenile court against some offenders above the juvenile age. The danger of a wide divergence in practice - subverting, in effect, the principle of a uniform juvenile age - would seem to make this latter approach objectionable. This objection is perhaps met, however, by still another suggestion that has been made. A legislation committee of the Ontario Magistrates' Association has proposed that a magistrate be given the power to remit a case to the juvenile court where the offence falls within a class consisting of certain less serious offences and where the accused has no previous convictions, and further, that the magistrate "be empowered, in his discretion, to remit the case only on application by the Crown which application must be made after arraignment and before plea." (134). While we would note that the technique of referral back from the adult court to the juvenile court seems to have led to some procedural confusion in at least one jurisdiction in which it has been used (District of Columbia), (135), we make no attempt to choose between alternative techniques here. We content ourselves with recommending that the proposals of the Archambault Commission and of the Ontario Magistrates' Association committee be studied with a view to adopting one, or perhaps even both, as a means of securing more flexibility in dealing with offenders of the age of seventeen - that is, those who are the one year older than our proposed juvenile age.

### Disposition

180. Upon making a finding of delinquency the juvenile court judge is given a wide choice of disposition alternatives. Section 20 of the Act declares, in subsection (1), that

"In the case of a child adjudged to be a juvenile delinquent the court may, in its discretion, take either one or more of the several courses of action hereinafter in this section set out, as it may in its judgment deem proper in the circumstances of the case:

- (a) suspend final disposition;
- (b) adjourn the hearing or disposition of the case from time to time for any definite or indefinite period;



- (c) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;
- (d) commit the child to the care or custody of a probation officer or of any other suitable person;
- (e) allow the child to remain in its home subject to the visitation of a probation officer, such child to report to the court or to the probation officer as often as may be required;
- (f) cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court;
- (g) impose upon the delinquent such further or other conditions as may be deemed advisable;
- (h) commit the child to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the Lieutenant-Governor in Council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if one there be; or
- (i) commit the child to an industrial school duly approved by the Lieutenant-Governor in Council."

181. We examine the powers of disposition of the juvenile court in some detail later in our Report. At this stage we are concerned with the problems of institutional commitment and allocation of responsibility for decision making in regard to committal, release and after-care. The initial question for consideration can be formulated in this manner. Should a child who has been adjudged delinquent in respect of the theft of a carton of cigarettes, for example - conduct which could subject a child to a training school committal under the present Act, as well as under our proposed revision of the law - be committed to an institution for potentially the same period of time

as a child who has been brought before the court for the offence of rape, robbery or murder? The question, in other words, is whether the Act should be amended to conform to the model of the Criminal Code. In favour of such a change is a basic assumption of our criminal law – that the extent of the sanctions that can be imposed upon an individual because of his anti-social conduct should be proportioned in some manner to the nature and gravity of that conduct. Parliament, in enacting the Criminal Code, differentiated between offences of greater and lesser seriousness by providing for differences in the maximum penalties that a court may impose. Thus an adult convicted of robbery may be imprisoned for life, whereas conviction for theft of property valued at fifty dollars or less carries a maximum penalty of imprisonment for two years. (136). Moreover, the criminal courts, in dealing with an adult offender, have the power to order a period of imprisonment less than the maximum authorized by the Code. In proceedings under the Juvenile Delinquents Act, on the other hand, any committal to a training school, regardless of the nature of the offence or the wishes of the judge, is for an indefinite period of time – that is, a period that may extend until the young person reaches the age at which release is required by law. This age is eighteen in some provinces and twenty-one in others. Theoretically, therefore, it would be possible in some provinces for an offender to remain in a training school from the age of seven to the age of twenty-one.

182. To the extent that this situation can be regarded as an objection to the existing provisions of the Act, the force of the objection is lessened considerably if our recommendations relating to offence jurisdiction are adopted. With the changes proposed it will no longer be possible, even theoretically, for a juvenile to be committed to a training school for such a minor offence as an infraction of a municipal by-law. Subject to that qualification, we are unable to accept the view that the Act should be modelled after the Criminal Code. For the adult offender who has committed a particularly heinous crime, Parliament may decide that the death penalty or life imprisonment is not too great a punishment to impose. However, it is because society takes the view that the juvenile offender should not be considered fully responsible for his conduct that penalties of such severity are not employed in relation to young persons. Moreover, it is expressly recognized that the public interest is better served if the juvenile offender is helped rather than punished in a retributive sense. Thus, as we have stated before, the Act directs that "as far as practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance." (137). Consequently, the range of sanctions that may be applied in the case of the juvenile offender is greatly narrowed. Within this narrow range it becomes difficult to proportion the penalty on the basis of the nature of the particular anti-social conduct in question. Perhaps still more important, given a change in emphasis from traditional punishment to modern reformative treatment, no tariff of punishments is really satisfactory. It does not follow,

of course, that acceptance of what has been called the "rehabilitative ideal" means that the question of civil liberties can be safely ignored. (138). So beguiling, in fact, is the language of therapy that all the more care must be taken to ensure protection of those liberties.

183. With this consideration in mind we propose that where a juvenile is subject to a finding that he is a child offender or young offender the maximum period of institutional commitment should not exceed three years. At the present time offenders are rarely kept in training schools for the full term of commitment. Our recommendation is merely designed to ensure that no youngster can be kept in an institution for the many years that are theoretically possible under the existing law. Long-term imprisonment has marked and detrimental effects on adults. Long-term confinement of youngsters may often be even more dangerous. We think that any rehabilitation of the juvenile that is likely to result from institutional committal can be completed within the three-year period that we suggest. If a juvenile is not reformed within three years by institutional experience, society should accept that risk unless it is prepared to allow youngsters to be held in what amounts to indefinite detention.

184. As a further protection of the rights of the juvenile and in keeping with the need, as we see it, to ensure responsible action on the part of authorities whose decisions are not now subject to independent review, we recommend that the person in charge of any facility to which a juvenile has been committed be required to submit annual reports to the committing judge on the youngster's progress and the plans being made for his release into the community. We further recommend that the juvenile court judge be given the statutory authority, in the case of any child who has been confined to an institution for a period of more than one year, not only to cause the child to be brought before the court - and this the judge may do at present under section 20 - but also, after considering the views of those responsible for the child's treatment and custody in an institution, to order the release of the child from the institution. (139). The judge should have the power to act on his own motion and, in appropriate cases, upon the application of the child or his parents. In order that this last recommendation will not be misunderstood we would add that we are not of the view that the approval of the juvenile court judge should be required before a young person can be released from a training school. We share the opinion of a number of persons who raised this question with us that the training school authorities will ordinarily be in a better position to make a decision concerning release than will the juvenile court judge. Our recommendation is intended as a safeguard against unnecessarily prolonged periods of confinement. We do think, however, that the training school authorities should consult with the juvenile court judge before a young person is released. If our proposals relating to after-care are adopted the need for such consultation will become even more apparent.



185. Section 20 of the Act confers upon a juvenile court judge extensive jurisdiction of a supervisory nature over any child adjudged delinquent. We have had occasion previously to refer to this power in considering the problem of "double jeopardy" that is presented by the existing provisions of the Act relating to waiver of jurisdiction. (140). Subsection (3) of section 20 provides, in part, as follows: "Where a child has been adjudged to be a juvenile delinquent and whether or not such child has been dealt with in any of the ways provided for in subsection (1), ..... (quoted above) .... the court may at any time, before such juvenile delinquent has reached the age of twenty-one years .... cause .... the delinquent to be brought before the court, and the court may then take any action provided for in subsection (1) .. ..". This provision serves two principal purposes. First, it allows the juvenile court to continue supervision over young persons who attain the juvenile age at a time when they are still subject to the jurisdiction of the juvenile court. Thus, for example, a probation order made when an offender is close to the juvenile age does not become ineffective simply because the offender reaches the juvenile age. Second, a means is established by law - to the best of our knowledge seldom used - for providing after-care supervision for an offender who has been released from a training school. It should be noted, however, that the provision is unrestricted as to the circumstances in which it can be invoked. Strictly speaking, therefore, a young person can be brought back before the juvenile court at any time before his twenty-first birthday for a reason quite unrelated to the original offence that led to action on the part of the juvenile court or to the supervision imposed in consequence of that offence. Originally section 20 was intended to implement a broad concept of wardship. (141). The explanation for the unrestricted language of the section lies in the protective, guardianship type of function that was envisaged for the juvenile court. Concern has now been expressed that a power as broad as that which is conferred by section 20 is potentially subject to abuse and, further, that it is undesirable that juvenile mistakes should be kept alive to disturb young persons years later.

186. We agree that the existing provision, as quoted above, is unduly wide. Indeed, in its present form we think that it is fundamentally misconceived. There is the necessity, of course, of ensuring that probation or other supervision can continue for a sufficient period of time. Moreover, we would emphasize the importance of after-care in the total correctional process and the need for adequate provision in the law to allow for a period of compulsory, after-care supervision as a normal consequence of committal to an institution. Specifically we recommend that, following release from an institution, every young person should, as a matter of course, be subject to the jurisdiction of the juvenile court for a period of up to two years, during which time he may be required by the court to observe certain conditions and to report to a probation officer or other designated person. (142). In other words, on being adjudged to be a child offender or young offender, a youngster would be potentially subject to the control of the authorities for a maximum period of five years. A child whose situation does not warrant committal to an

institution should, we think, be subject to control for a period not exceeding two years. This would mean that he could be required to observe conditions of probation and to report to a probation officer for that period of time. In no case, however, should the juvenile court have the power to make an order affecting a young person beyond his twenty-first birthday. The time periods that we propose are not based upon objective criteria. So far as we are aware, none are available. What we have sought is a time period of sufficient duration so that treatment resources, if available and used, might be expected to have their effect. Anyone who has reached the age of twenty-one is, in our opinion, beyond any reasonable conception of the scope of the Act. To the above recommendations we would add one other. We endorse a proposal contained in a submission made by the Canadian Corrections Association that the Act should provide that when the juvenile court judge considers that a particular offender no longer requires the supervision of the court he may discharge the young person and thereafter no further action may be taken in respect of the matter that has brought the young person within the jurisdiction of the court. (143).

187. It will be evident that practical difficulties will remain in some cases where the juvenile court has the responsibility for supervising older offenders. As we indicated in discussing the matter of the upper age limit of juvenile jurisdiction, it is our view that the juvenile court approach is really not appropriate for dealing with most offenders above the age of seventeen. For this reason, it seems to us almost inevitable that attempts by the juvenile court to exercise control over older adolescents, even if only for the purpose of after-care supervision, will sometimes prove to be unproductive. Perhaps more important is the problem of compelling compliance with orders of the juvenile court. It is not clear how effective the supervision of the juvenile court can be without the threat of a training school committal or some equivalent sanction in the event that a young person refuses to co-operate with the court. The training schools are not able to accommodate offenders in this older age group. These same problems arise, of course, under the existing provisions of the Act. We doubt that such difficulties can be entirely removed. However, we do propose a partial solution to the problem. In the case of any young person seventeen years of age or over who is subject to the supervision of the juvenile court and who is in violation of a condition that he is required to observe, the court should have power either to deal with the matter itself or to cause an appropriate charge to be laid against the offender in the ordinary criminal courts for violation of the condition. In this way we think that it will be possible to cope with the intractable offender whose failure to co-operate with the juvenile court makes him no longer a suitable subject for this extension of the juvenile court process.

#### Footnotes

1. Juvenile Delinquents Act, s. 42.
2. Juvenile Delinquents Act, s. 43.

3. See British North American Act, 1959, 12-13 Geo.6, c.22, s.1.
4. See Scott, The Juvenile Court in Law (4th ed., 1952), pp.30-31.
5. There is an additional advantage to proclaiming the Act in force throughout Canada. In some parts of the country it sometimes happens that there is difficulty establishing that the Act has been brought into force in a particular locality. See, for example, Regina v. Mahaffey (1961) 36 C.R. 262. This has led to recommendations that the method of proving that the Act is in force be simplified. If the Act were made applicable throughout Canada, this problem would no longer arise.
6. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association - Ontario (1962), p.1.
7. Brief submitted by the Department of Psychiatry of the University of British Columbia (1962), p.7.
8. Brief submitted by The John Howard Society of British Columbia (1962), pp.1-2.
9. See, for example, Herman "Scope and Purposes of Juvenile Court Jurisdiction" (1958) 48 Journal of Criminal Law, Criminology and Police Science 596, at p. 593 n.23; Paulsen, "The Delinquency, Neglect and Dependency Jurisdiction of the Juvenile Court", in Justice for the Child (Rosenheim ed., 1962), pp.45-46; Rubin, "Legal Definition of Offenses by Children and Youths", (1960) University of Illinois Law Forum 512, at p.514.
10. Paulsen, supra note 9, at p.46.
11. Kvaraceus and Miller, Delinquent Behavior: Culture and the Individual (National Education Association Juvenile Delinquency Project, vol. 1, 1959), p.91.
12. Brief submitted by the Department of Psychiatry of the University of British Columbia (1962), p.2.
13. Aichhorn, Wayward Youth (Meridian repr., 1955), p.29.
14. Brief submitted by the Community Fund and Welfare Council of Greater Windsor (1962), p.2.
15. Brief submitted by the British Columbia Corrections Association (1962), p.5.



16. Canadian Corrections Association, The Child Offender and the Law (1962), pp. 5-6.
17. Juvenile Delinquents Act, s. 38.
18. Submission of the Ontario Welfare Council (1962), p.2.
19. See generally Martin's Criminal Code (1955), pp.272 et. seq. See also Lacey, "Vagrancy and other Crimes of Personal Condition," (1953) 66 Harvard Law Review 1203; Sherry, "Vagrants, Rogues and Vagabonds - Old Concepts in Need of Revision", (1960) 48 California Law Review 557. For an interesting comment on the related question of juvenile status offences, see Matza, Delinquency and Drift (1962), pp. 165-169.
20. See infra paras. 149-150
21. See infra paras. 266-269.
22. See infra paras. 286-292.
23. See infra paras. 240-244 and 340-343.
24. See generally Parliamentary Debates (U.K.), House of Lords, 10th December 1962, cols. 397-410 and 419-444, and 24th January, 1963, cols. 204-236; Wootton, "The Juvenile Courts," (1961) Criminal Law Review 669.
25. See, for example, Wootton, supra note 24, at pp. 675-677.
26. Report of the Committee on Children and Young Persons (Cmnd. 1191, 1960), paras. 66 and 72, pp. 26 and 28-29 (hereinafter cited as Ingleby Committee).
27. See infra paras. 246-256.
28. See, for example, Dunham, "The Juvenile Court: Contradictory Orientations in Processing Offenders," (1958) 23 Law and Contemporary Problems 508, at p. 520; Studt, "The Client's Image of the Juvenile Court," in Justice for the Child, op. cit. supra note 9, at pp. 203-207. See also the interesting discussion of the possible effect of juvenile court principles and practices upon the juvenile offender in Matza, op. cit. supra note 19, pp. 111-136.
29. Report of the Committee on Children and Young Persons, Scotland (Cmnd. 2306, 1964), paras. 72-76, pp. 36-38 (hereinafter cited as Kilbrandon Committee). See also the subsequent White Paper issued

by the Home Office, entitled, The Child, The Family and the Young Offender (Cmnd. 2742, 1965).

30. The Shorter Oxford English Dictionary (3rd ed., 1944), p. 2019.
31. See Hart "The Aims of the Criminal Law," (1958) 23 Law and Contemporary Problems 401.
32. See infra paras. 149, 154-156, 161, 240-244, 286-292 and 340-343.
33. Parliamentary Debates (U.K.), House of Lords, 24th January, 1963, col. 208.
34. See infra paras. 266-269.
35. See generally Paulsen, "Fairness to the Juvenile Offender," (1957) 41 Minnesota Law Review 401; Antieau, "Constitutional Rights in Juvenile Courts," (1961) 46 Cornell Law Quarterly 387. See also the celebrated dissenting opinion of Musmanno, J., in the case of In Re Holmes, 379 Pa. 599, 109 A2d. 523 (1955).
36. Ingleby Committee, para 66, p.26.
37. Younghusband, "The Dilemma of the Juvenile Court," (1959) Social Service Review 10, at p. 15.
38. Id., at pp. 15-17.
39. See infra paras. 255-256 and Chapter X.
40. For a general discussion of the relationship between delinquency and neglect in defining the basis of juvenile court jurisdiction, see Paulsen, supra note 9; Herman, supra note 9, at pp. 590-592. See also Report of the Governor's Special Study Commission on Juvenile Justice (California, Part I, 1960), pp. 18-20; Dunham, supra note 28.
41. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association - Ontario (1962), p.3.
42. See infra paras. 266-269 and 286-292
43. See infra paras. 286-287.
44. Kilbrandon Committee, para. 65, p.33.
45. Id., at para. 65, p. 32.

46. See, for example, Williams, Criminal Law: The General Part (2nd ed., 1961), pp. 814-821; Ingleby Committee, para. 81, p. 31; Kilbrandon Committee, paras. 60-65, pp. 31-33.
47. The Child Welfare Act, Revised Statutes of Saskatchewan, 1953, c. 239, as amended.
48. See generally Russell on Crime (11th ed., by J.W.C. Turner, 1958); Williams, supra note 46, at pp. 814-821.
49. "No person shall be convicted of an offence in respect of an act or omission on his part while he was seven years of age or more, but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong." Criminal Code, Statutes of Canada 1953-54, c. 51, s. 13 (hereinafter cited as Criminal Code).
50. Ingleby Committee, para. 94, p. 36.
51. Criminal Code, s. 16.
52. See infra paras. 286-288.
53. Juvenile Delinquents Act, ss. 2(1)(a) and 2(2).
54. The Welfare of Children Act, Revised Statutes of Newfoundland 1952, c. 160, ss. 2(b) and 39. Quære the effect of The Child Welfare Act, Statutes of Newfoundland 1964, c. 45, s. 55.
55. International Review of Criminal Policy (Nos. 7-8, 1955), pp. 13-15; Tappan, Comparative Survey of Juvenile Delinquency (Part 1. North America, 1958), pp. 7-8.
56. Report of the Royal Commission to Investigate the Penal System of Canada (Ottawa, 1938), pp. 188-189 (hereinafter cited as Archambault Commission).
57. Report of the Committee on the Revision of the Juvenile Delinquents Act (Canadian Welfare Council, 1956), p. 6.
58. Archambault Commission, p. 189.
59. Brief submitted by the Canadian National Conference of Training School Superintendents (1962), p. 3.
60. Report of the Committee on the Revision of the Juvenile Delinquents Act (Canadian Welfare Council, 1956), p. 6.



61. Juvenile Delinquents Act, s. 2(1) (h).
62. McDavid and McCandless "Psychological Theory, Research and Juvenile Delinquency," (1962) Journal of Criminal Law, Criminology and Police Science 1, at p.5.
63. The Annals of the American Academy of Political and Social Science (November, 1961).
64. For an interesting analysis of some of the problems of a psychological nature associated with adolescence see Erikson, "Ego Identity and the Psychosocial Moratorium," in New Perspectives for Research on Juvenile Delinquency (Witmer and Kotinsky ed., 1955), pp.1-17.
65. The authors of a study prepared for the United States Congress by the National Institute of Mental Health have observed: "A great deal of data show delinquency to be a phenomenon of adolescence. This familiar fact has important implications from the point of view of individual development. It means that there is an area of crisis between the ages of 14 and 19 which the delinquency-age curve, peaked at 15-17, represents .... Wirt and Briggs show that a group of boys delinquent at age 14, 82 per cent show delinquency again by age 16, 60 per cent have further delinquencies through age 19, and only 20 per cent repeat again during ages 20 to 23. If many adult criminals were once delinquents, most delinquents do not become adult criminals.... It is very difficult - apart from a few small subgroups - to predict, from the occurrence of a delinquent offence, that there will be others, or what their nature will be....". Cook and Rubinfeld, An Assessment of Current Mental Health and Social Science Knowledge Concerning Juvenile Delinquency (National Institute of Mental Health, 1960), c.111. pp.38-39. Some of the research studies on this question are reviewed in Wootton, Social Science and Social Pathology (1959), c.V.
66. Tappan, "Proposals for the Sentencing and Treatment of the Young Adult Offender under the Model Penal Code," in Model Penal Code (American Law Institute, Tent. Draft No.3, 1955), p. 10.
67. Nyquist, Juvenile Justice: A Comparative Study with Special Reference to the Swedish Child Welfare Board and the California Juvenile Court System (Cambridge Studies in Criminology, 1960), p.163.
68. More precisely, the juvenile court would have exclusive original jurisdiction in every case where an offence is committed by a

person sixteen years of age and under, even though the offender is over that age at the time that he is apprehended. This is the basis upon which juvenile court jurisdiction is established under the present Act. See Juvenile Delinquents Act, s. 4. It would seem to be more consistent with the philosophy of the Act as a whole to establish the jurisdiction of the juvenile court by reference to the time when the offence was committed, rather than, as under the English statute, to limit jurisdiction to cases where the offender is actually under the juvenile age at the time of his appearance in juvenile court. See *infra* paras. 137-142 and 147-148. It has been suggested that this is an anomalous position, since it means that occasionally older offenders must be brought before the juvenile court. However, the juvenile court has available to it the waiver provisions, so that it is doubtful whether this basis of jurisdiction creates any substantial difficulty. Nevertheless, there may be special situations in which juvenile court jurisdiction should not attach - as, for example, where a juvenile who has been transferred to the ordinary courts and who has been committed to an adult institution escapes from custody and is to be charged with an offence in respect of the escape.

69. Tappan, supra note 66, at p. 10 n.4.
70. Ibid.
71. Lord's Day Act, Revised Statutes of Canada, 1952, c.171.
72. "Where an accused is in custody and signifies in writing before a magistrate his intention to plead guilty to an offence with which he is charged that is alleged to have been committed in Canada outside the province in which he is in custody, he may .... be brought before a court .... that would have jurisdiction to try that offence if it had been committed in the province where the accused is in custody, and where he pleads guilty to that offence, the court .... shall convict the accused and impose the punishment warranted by law ....". Criminal Code, s. 421(3). It is the Committee's experience that there is some difference of opinion concerning the interpretation of this provision as applied to juvenile offenders. See also para. 293 infra.
73. Canadian Corrections Association, The Child Offender and the Law, p. 5.
74. See generally Bloch and Flynn, Delinquency: the Juvenile Offender in America Today (1956), c. 12; Hurley, Origin of the Illinois Juvenile Court Law (1909); Lindsey, "The Juvenile Court of Denver," in Children's Courts in the United States (Int'l. Prison Comm'n, 1904), p. 63; Lou, Juvenile Courts in the United States (1927); Mack, "The Juvenile Court," (1909) 23 Harvard Law Review 104 (1909).

75. It is interesting, in this connection, to note the wording of the original draft of what is now section 2(1) (f) of the Act. It defined a "juvenile delinquent" as: "Any child who violates any provision of the Criminal Code, chapter 146 of the Revised Statutes, 1906, or of any Dominion or Provincial statute, or of any by-law or ordinance of any municipality, for which violation punishment by fine or imprisonment may be awarded; or, who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or Provincial statute; or who is incorrigible; or, who without just cause and without the consent of its parent or guardian, absents itself from its home or place of abode; or who knowingly associates with thieves, or vicious or immoral persons; or who is growing up in idleness or crime; or who knowingly frequents, visits, or enters a disorderly house within the meaning of section 228 of the Criminal Code; or who patronises or visits any bar-room or saloon where intoxicating liquor is sold, or any public billiard or pool room, or who not being in charge of any grown up person, attends any theatrical performance, or who wanders about the streets in the nighttime without being on any lawful business or occupation or who habitually wanders about any railway yard or tracks, or who enters any railway car or engine without lawful authority, or who habitually uses vile obscene, vulgar, profane, or indecent language; or who is guilty of immoral conduct in any public place, within the meaning of section 197 of the Criminal Code, or in any school premises, or who smokes or has in its possession cigarettes, cigars or tobacco in any form." See Scott, The Canadian Juvenile Delinquents Act (reprint of address delivered to the American Prison Association in October, 1914), p.4.
76. The applicability of the "parens patriae" concept to the delinquency jurisdiction exercised by American juvenile courts is, in fact, controversial. See Pound, Interpretations of Legal History 134 (1923); S. and E. Glueck, "Historical and Legislative Background of the Juvenile Court," in The Problem of Delinquency (S. Glueck ed., 1959), p. 256, at pp.258-259; Lou, supra note 74, at p.4; Note, "Misapplication of the Parens Patriae Power in Delinquency Proceedings," (1954) 29 Indiana Law Journal 475, at pp.481-482.
77. Hurley, op. cit. supra note 74, at pp.23-24.
78. See Scott, op. cit. supra note 4, at pp.1-3.
79. Brief submitted by the School of Social Work of the University of British Columbia (1962), pp.1-2.
80. See, for example, Hall, General Principles of Criminal Law (2nd. ed., 1960), c. 11.



81. E.g., Province of Alberta; State of New York.
82. Canadian Corrections Association, The Child Offender and the Law, pp.5-6.
83. "Nothing in this Act shall be construed as having the effect of repealing or over-riding any provision of any provincial statute intended for the protection or benefit of children; and when a juvenile delinquent who has not been guilty of an act which is, under the provisions of the Criminal Code an indictable offence, comes within the provisions of a provincial statute, it may be dealt with either under such Act or under this Act as may be deemed to be in the best interests of such child." Juvenile Delinquents Act, s.39.
84. For a general discussion of the problem of the juvenile traffic offender see Sheridan, "Youth and the Traffic Problem," (1958) 25 The Police Chief 27.
85. Report of the Governor's Special Study Commission on Juvenile Justice (California, Part 1. 1960), p.22.
86. Id., at pp.22-23.
87. Id., at p.21. It might be noted also that the Commission proposed that there should be set forth in the law specific dispositions that might be made by the traffic hearing officer. He would be limited to the following dispositions: (a) dismissal; (b) reprimand; (c) informal probation up to six months; (d) fine to a maximum of \$25.; (e) license suspension or restriction to a maximum of thirty days; or (f) referral for a delinquency hearing to the juvenile court. Id., at p.22.
88. National Council on Crime and Delinquency, Standard Juvenile Court Act (6th ed., 1959), s.19 (hereinafter cited as Standard Juvenile Court Act).
89. Minnesota Juvenile Court Code, Minnesota Laws 1959, c.685, s.30. See Pirsig, "Juvenile Delinquency and Crime: Legislative Achievements in Minnesota in 1959," (1960) 44 Minnesota Law Review 363, at pp. 379-383.
90. Oregon Revised Statutes 1953, s.419.533, as amended by Laws of Oregon 1959, c.432, s.59.
91. Canadian Corrections Association, The Child Offender and the Law, p.8.

92. Id., at p.6.
93. See Rohac, "Regina's Juvenile Bicycle Safety Court," (1964) 6 Canadian Journal of Corrections 374.
94. The Welfare of Children Act, Revised Statutes of Newfoundland 1952, c.60, s.39.
95. The Training Schools Act, Revised Statutes of Ontario 1960, c.404, s.7. This provision has been removed in new legislation enacted in 1965. See The Training Schools Act, 1965, Statutes of Ontario 1965, c.132, ss.8 and 29.
96. Province of Ontario, Annual Report of the Department of Reform Institutions (Part 2, Training Schools, 1961), pp.33-34.
97. Industrial School for Girls Act, Revised Statutes of British Columbia 1960, c. 191. This statute has now been repealed by Training-schools Act, Statutes of British Columbia 1963, c. 50, s. 11.
98. Training-schools Act, Statutes of British Columbia 1963, c.50, s.11.
99. The Industrial and Correctional Homes Act, Revised Statutes of Manitoba 1954, c.124, s.9.
100. Training School Act, Statutes of New Brunswick 1961-62, c.33, s.11.
101. "...We are of the opinion that another definition of a delinquent should be added, namely, that where a child is incorrigible he should be deemed to be a juvenile delinquent and the definition of incorrigibility should be spelled out in the Act. At the present time in order to charge a child with incorrigibility the information must read that he is a juvenile delinquent by reason of an infraction of the Industrial and Correctional Homes Act of Manitoba, Chapter 124, R.S.M. 1954, Section 9 .... The trouble with this procedure is that a parent or guardian of the youth .... must lay the complaint and in some cases it is very difficult to have a parent or guardian lay the information." Brief submitted by the Judges of the Winnipeg Juvenile Court and Family Court (1962), pp.4-5.
102. Standard Juvenile Court Act. ss. 8 and 24. A commentary on these sections appears in Rubin, supra note 9, at pp. 512-516.
103. See Porterfield, Youth in Trouble (1946), pp. 15-22.

104. "In this class of cases there is no need for judicial power, as in the case of crimes, in order to protect the community from a child who is harming others or to deter violations of law by other children. The goal is only to help the child and prevent his further departure from social norms (and incidentally to give surcease to the parents or other embattled authorities). Arguing against this jurisdiction, is the lack of knowledge of whether self-injuring 'delinquent' behavior is an index of adult criminality to the same extent as is a child's commission of a crime." Dembitz, "Ferment and Experiment in New York: Juvenile Cases in the New Family Court," (1963) 48 Cornell Law Quarterly 499, at p.506. See also Fomataro, "It's Time to Abolish the Notion of Pre-Delinquency," (1965) 7 Canadian Journal of Corrections 189; Rubin, supra note 9, at pp. 513-516; paras. 143-146 supra.
105. See, for example, Ingleby Committee, paras. 83-94, pp. 31-36; Standard Juvenile Court Act, ss. 8 and 24 and commentary at p.25; Minnesota Juvenile Court Code, Minnesota Laws 1959, ch. 685, art.2; New York Family Court Act, N.Y. Sess. Laws 1962, ch. 686 as amended, arts. 712 and 753-758; Oughterson, "Family Court Jurisdiction," (1963) 12 Buffalo Law Review 467; Paulsen, supra note 9, at pp. 49-56; Pirsig, supra note 89, at pp. 379-380; Rubin, supra note 9, at pp. 512-516.
106. See infra paras. 286-287.
107. Ingleby Committee, para. 84, pp. 31-32.
108. Ibid.
109. New York Family Court Act, art. 712(b).
110. See, for example, Minnesota Juvenile Court Code, art.2.
111. Of interest in this connection is the scheme adopted under the New York Family Court Act. See Oughterson, supra note 105, at p.477.
112. See infra paras. 286-292 and 270-272, and Chapter X.
113. One situation in particular should be mentioned. The jurisdiction of the juvenile court is defined by reference to the age of the child at the time that the offence was committed, rather than at the time of his appearance before the juvenile court. While we think that this is the proper basis for determining juvenile court jurisdiction, nevertheless this does give a special importance to the availability of the waiver procedure in individual cases. See supra note 68.



114. See, for example, Sargent and Gordon, "Waiver of Jurisdiction - An Evaluation of the Process in the Juvenile Court," (1963) 9 Crime and Delinquency 121, at p. 124.
115. See, for example, Pound, "The Juvenile Court in the Service State," in Current Approaches to Delinquency (National Probation Association Yearbook, 1949), p.23, at pp.31-32; Ludwig, Youth and the Law (1955), p.25.
116. See generally Advisory Council of Judges to the National Council on Crime and Delinquency, "Transfer of Cases Between Juvenile and Criminal Courts - A Policy Statement," (1962) 8 Crime and Delinquency 3; Sargent and Gordon, supra note 114; Schreiber, "Comments Upon Indictable Offences in the Juvenile Delinquents Act," (1957) 35 Canadian Bar Review 1073; Hobbs "Juvenile Murderers," (1944) 22 Canadian Bar Review 377; Note, "District of Columbia Juvenile Delinquency Proceedings: Apprehension to Disposition," (1960) 49 Georgetown Law Journal 322, at pp.341-345.
117. In Re Mont, (1954) 175 Pa. Super. 150, at pp. 154-155, 103 A.2d. 460, at p.462.
118. Re L. Y. (No.1), (1944) 88 C.C.C. 105, at p.106, approved in Regina v. Paquin and De Tonnancourt, (1955) 21 C.R.612 (Man. C.A.). But cf. Re Liefso, (1964) 46 C.R. 103.
119. Regina v. Truscott, (1959) 125 C.C.C. 100, at p.102.
120. The Children's Bureau formulation appears as an alternative to that adopted in the Standard Juvenile Court Act. See Standard Juvenile Court Act, at p.34.
121. General Statutes of Kansas, 1949, art. 38-312, as amended by Laws of Kansas 1957, c. 256, s.12.
122. We have been told that in cases involving serious offences the local crown attorney - at the instigation of his Attorney General - has often applied strong and effective pressure on the juvenile court judge to waive jurisdiction.
123. This is an aspect of the philosophy of the juvenile court movement that is not always kept in mind in assessing questions of jurisdictional competence. On the question of the treatment implications of the juvenile court hearing, see Schramm, "The Court Hearing as Part of the Treatment Process," in Current Approaches to Delinquency (National Probation Association Yearbook, 1949), p.44; Sachar,

"A Judge's View of Juvenile Probation and Parole, in Crime Prevention through Treatment (National Probation Association Yearbook, 1952), p. 117, at pp. 118-119. On the other hand, some would question whether a juvenile court appearance has any beneficial effect on the child. See, for example, the remarks of Lady Wootton in Parliamentary Debates (U.K.), House of Lords, 10th December, 1962, cols. 399-401.

124. See Ingleby Committee, paras. 237-239, pp. 75-76.
125. See, for example, Pepler, "The Juvenile Delinquents Act, 1927," (1952) 30 Canadian Bar Review 819, at p. 823.
126. An excellent example is the juvenile court statute of Ohio, which permits waiver of jurisdiction by the juvenile court only "after full investigation, and after a mental and physical examination of such child has been made by the bureau of juvenile research, or by some other public or private agency, or by a person qualified to make such examination....". Ohio Revised Code 1953, art. 2151.26.
127. In the same way it would be necessary for another magistrate to conduct any proceedings subsequent to waiver in cases where a juvenile court judge also acts as magistrate. See, for example, Regina v. Pagee, (1962) 41 W.W.R. (N.S.) 189, at p. 190. We are told that it sometimes happens that a juvenile court judge will waive jurisdiction and then proceed to hear the case in his capacity as magistrate. An example of this practice is noted in Re Miller, (1962) 132 C.C.C. 349. For a short discussion of some of the other procedural problems connected with the waiver procedure, see Pepler, *supra* note 125, at pp. 823-824; Pool, "Letter to the Editor", (1950) 36 Canadian Bar Review 142; Teed, "Letter to the Editor", (1958) 36 Canadian Bar Review 600; Reg. v. P.M.W., (1955) 16 W.W.R. (N.S.) 650.
128. See infra paras. 253-254
129. Juvenile Delinquents Act, s. 20(3).
130. An order of this kind was upheld on appeal in Regina v. Lalich, (1963) 40 C.R. 133 (B.C. C.A.).
131. See, for example, Sheridan, "Double Jeopardy and Waiver in Juvenile Delinquency Proceedings," (1959) Federal Probation 43.
132. Of more than 26,000 cases dealt with by the juvenile courts in California in 1958, only 269 were transferred to the ordinary criminal courts - notwithstanding the requirement in the California

law that whenever a minor over the age of sixteen is before the juvenile court in connection with a criminal law violation, the court must make a finding regarding his fitness for consideration in the juvenile court as a basis for retaining jurisdiction. Moreover, most of the cases transferred involved misdemeanours. Only 34 of the transfers were cases of persons charged with felony offences. See Report of the Governor's Special Study Commission on Juvenile Justice (California, Part 11, 1960), p.23.

133. Archambault Commission, p. 189.
134. Report of the 1962 Legislation Committee of the Ontario Magistrates Association (1962), p.37.
135. See Note, "District of Columbia Juvenile Delinquency Proceedings: Apprehension to Disposition," supra note 116, at p.343.
136. Criminal Code, ss.289 and 280(1).
137. Juvenile Delinquents Act, s.38.
138. Allen "Criminal Justice, Legal Values and the Rehabilitative Ideal," (1959) 50 Journal of Criminal Law, Criminology and Police Science 226, also reprinted in Allen, The Borderland of Criminal Justice (1964), at p.25. A useful discussion of this question appears in Morris and Howard, Studies in Criminal Law (1964), c.V.
139. There is one point of a technical nature that might usefully be noted. It has been recommended that section 20(3) of the Act should be amended to provide that if the juvenile court judge dies or ceases to hold office, then his successor may exercise the powers of the judge who dies or ceases to hold office in order to effect the discharge of a child on parole or the release of a child from detention. See Proceedings of the 35th Annual Meeting of the Canadian Bar Association (1953), p.70. As one court has had occasion to observe, "The Act is not a lawyer's Act, not a model of perfection in the matter of draftsmanship....". Rex v. H. and H., (1947) 1 W.W.R. 49, per Manson, J., at p.51, 88 C.C.C.8, at p.11. The importance of giving due consideration to this and other similar kinds of technical problems in any review of the Act is worth emphasizing.
140. See supra para. 176.
141. Prior to the revision of the Act in 1929, the provision that now appears as section 20(3) specified that every child adjudged delinquent "shall continue to be a ward of the court until it has been discharged as such ward by order of the court or has reached the age of twenty-one years;



and the court may at any time during the period of wardship cause such child to be returned to the court for further or other proceedings....". The Juvenile Delinquents Act, 1908, Statutes of Canada 1908, c.40, s.16(3). It was evident at the 1928 Conference called to consider changes in the Act that there existed much uncertainty concerning the implications of referring to a child as a "ward of the court", having regard in particular to the fact that the concept of wardship has different meanings in other contexts. See Proceedings of the Round Table Conference on Juvenile Delinquency (1928) pp. 40-49 and 117. Accordingly, all reference to the words "ward of the court" was removed in the 1929 Act. See also Scott, The Juvenile Court in Law (3rd ed., 1941), pp. 21-22.

142. It will be necessary, of course, to establish an adequate procedure for the transfer of jurisdiction over the child or young person from the training school authorities to the juvenile court. This may necessitate a greater measure of consultation between the training school and the juvenile court than has hitherto been the practice in some areas. Cooperative effort on the part of all agencies concerned with the treatment and control of the juvenile offender is, in any case, a matter of considerable importance. In this connection see also infra paras. 333-336.
143. Canadian Corrections Association, The Child Offender and the Law, pp. 12-13.

## PART 111 TREATMENT OF THE JUVENILE OFFENDER

### CHAPTER VI

#### PHILOSOPHY AND MEANING OF TREATMENT

188. In representations made to the Committee there has been a repeated emphasis upon one essential principle; that a juvenile who has engaged in anti-social conduct should receive treatment, not punishment. We have been referred time after time to section 38 of the Act which directs, as we have noted previously, "that as far as practicable every juvenile delinquent should be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance." It thus becomes necessary to distinguish between punishment and treatment.

189. Among the purposes attributed to the criminal law are those of deterrence, rehabilitation, incapacitation and retribution. We have been told by many persons that in the twentieth century the courts should not allow their actions to be influenced by retributive motives. For the adult an incapacitative sentence is one that prevents the offender from posing any further danger to society. A person serving a life sentence in a maximum security institution without possibility of parole can be considered as incapacitated. However, even for the adult offender incapacitation by itself is thought to be harsh and inadequate. In the case of the juvenile offender it is accepted that incapacitation should not be a primary objective in itself. The goal instead is to ensure, as the pre-eminent consideration, that the juvenile offender is assisted to become a law-abiding citizen. The way in which the juvenile court concept seeks to implement this objective can be stated in the form of two related propositions: that treatment, institutional or otherwise, should be exclusively designed to further the juvenile's education and readjustment; and that whether a particular measure is to be applied depends not on what the juvenile has done but on what is necessary and useful for him. (1). Judicial action intended to achieve this overriding goal, and guided by these implementing principles, can be considered as rehabilitative. The difficulty is, however, as the author of one influential essay on the criminal law has pointed out, that "social purposes can never be single or simple, or held unqualifiedly to the exclusion of all other social purposes ....". (2). To concentrate upon one objective alone is to prejudice other values that are also important. "The problem," it is said, "is one of the priority and relationship of purposes as well as of their legitimacy ....". (3). The Ingleby Committee was clearly aware of this fact when it observed: "Although it may be right for the court's action to be determined primarily by the needs of the particular child before it, the court cannot entirely disregard other considerations such as the need to deter potential offenders. An element of general deterrence must enter into many of the court's decisions and this must make the distinction between treatment and punishment even more difficult to draw." (4).

190. We have suggested that judicial action predominantly intended to ensure that the juvenile offender becomes a law-abiding citizen can be considered as rehabilitative. In this view the test of whether action is treatment or punishment depends upon the intention of the juvenile court judge. Two difficulties are immediately evident. The intention of the juvenile court judge cannot necessarily be determined from his objective conduct. Is commitment of a juvenile to training school to be characterized as treatment and thus deserving of the approval of all "right-thinking members" of the community? Is the imposition of a fine to be characterized as punishment and therefore to be abhorred? Nor is this the end of the problem. Even if the judge's intentions are clear, should they be the sole test of whether the action is treatment or punishment? Are the feelings of the child relevant? In this connection, too, the comments of the Ingleny Committee are helpful:

" This difficulty of distinguishing between treatment and punishment often leads to a feeling on the part of the child .... that he has been unfairly treated (for example, if one child is sent to an approved school for a comparatively minor offence because of unsuitable home circumstances, while another with a good home is placed on probation for a similar offence) .... Again, the ultimate good of both child and public may be for the child to undergo long-term training away from home. Neither the gravity of the immediate misbehaviour nor the child's ..... degree of responsibility may in 'fairness' warrant this if it is to be regarded as a punishment. Even if it is regarded as treatment, it may still be felt as punishment. In the sense that it follows as a result of misbehaviour .... it will in fact be punishment. It is clear that, in practice at any rate, it is impossible to distinguish between treatment and punishment, The same thing may be either punishment or treatment, or both at the same time." (5).

191. We agree with the philosophy expressed in section 38 of the Act. The difficulty has been not in the basic philosophy of the Act but in the failure of society to give to the juvenile court adequate resources with which to fulfil the aims of that philosophy. For the purposes of our discussion in this Part we consider any action which affects a juvenile's chances of rehabilitating himself, taken by a person legally authorized to act in relation to that juvenile, to be treatment. In this light we now examine treatment resources and other methods in the order in which a juvenile is likely to meet them.



### Footnotes

1. See Grunhut, "The Juvenile Court: Its Competence and Constitution," in Lawless Youth: A Challenge to the New Europe (Howard League for Penal Reform, Fry ed., 1947), p. 21, at p. 22.
2. Hart, "The Aims of the Criminal Law," (1958) 23 Law and Contemporary Problems 401.
3. Ibid.
4. Ingleby Committee, para. 110, p. 41.
5. Id., at paras. 111-112, p. 42.



## TREATMENT PRIOR TO JUDICIAL DETERMINATION OF DELINQUENCY

The Police

192. Traditionally, the role of the police in law enforcement has been the protection of life and property and the prevention and detection of crimes and offences. Prevention in this context has usually stressed the more normal police activities, such as patrolling and observation, designed to limit the opportunities available to potential law-breakers. These activities are not particularly concerned with the social aspects of crime and do not involve any organized attempt to deal with factors thought to be conducive to the development of criminals. The detection of offenders and the court process that follows may be said to be a form of prevention. Most law enforcement officers hold the belief - shared by many criminologists - that sure detection, swift prosecution, and a rational disposition by the court are still the best deterrents to unlawful behaviour.

193. The preservation of the "Queen's Peace" remains the most basic and important of all law enforcement functions. Nevertheless, in recent years much greater emphasis has been placed upon the idea of crime prevention in the broader sense. In particular, there is an increasing recognition on the part of law enforcement officers that the prevention of juvenile crimes is one of their most important functions. However, the manner in which this objective should be achieved is a matter of considerable controversy. In the following paragraphs we examine the role of the police in the prevention of juvenile crime as well as such problems as police discretion, police liaison with other community agencies, police questioning of juveniles and organization and training of police officers who work with juveniles.

194. Should police officers as part of their official functions engage in informal probation or family case work? (1). Should they be responsible for community recreation programs? We are most doubtful. Good juvenile law enforcement requires good police work. Enforcement is vital for the control of anti-social behaviour and the development of corrective measures. Extension of the police role in juvenile law enforcement toward a social work function hinders the effectiveness of a police department in law enforcement activities. There is also the danger of confusing the public's mind concerning the police role, and a resulting loss of respect for the peace officer. Such activity may not only undermine the position of the police itself. It may also affect adversely the position of other persons seeking to do preventive work. Social work, we think, can only be done within a framework of solid ground rules, and the police officer is the authoritarian figure who is always in the background to serve as an indication of those ground rules. Senior police administrators interviewed by the Committee were unanimous in the view that the primary



role of the police is the enforcement of the law, and that police officers should not become involved in probation work or family case work. We agree with their view in this matter. We share also their opinion that recreational programs should not be organized as an official part of the police operation. More good is ultimately accomplished by encouraging the police to point out gaps in community services, and by promoting action to remedy the situation, than by using the limited number of police officers available for activities other than law enforcement. There is, however, one additional point that we would emphasize, a point well stated in a California study: "Juvenile law enforcement responsibilities of detection, apprehension, and deterrence . . . can and should be accomplished without compromising effective rehabilitation principles or neglecting preventive functions." (2).

195. Police discretion in juvenile law enforcement has three aspects. First, there is the question whether a child should be charged or, alternatively, dealt with on an informal basis. Second, if it is decided to deal with the case informally the question then is whether the child should be referred to an agency other than the court or should be dealt with on the spot by police action alone. Third, if it is decided to charge the child the police must determine whether or not to place him in detention pending a hearing. The extent to which police discretion is exercised varies considerably throughout the country. In a large number of communities the police have the authority to determine whether a charge should be proceeded with, while in other communities this decision is made solely by the probation staff or by some other agency working with the juvenile court.

196. The question to be decided is whether the exercise of discretion by the police is proper and, if so, whether principles can be formulated for the sound exercise of that discretion. It has been suggested that the police must have discretion to prevent probation departments, detention centres and juvenile courts from becoming overloaded with unnecessary referrals that could be dealt with in other ways. There are several objections to this suggestion. In the first place it assumes that the police are the proper persons to lighten the burden on the other official agencies in the administration of juvenile justice. It assumes, moreover, that the police officer is competent to decide that his caution to a child whom he has found committing an offence is sufficient to make it unlikely that the child will commit it again, and, moreover, that the child is not one whose delinquency results from deeply rooted causes that require the type of treatment available only by action on the part of the juvenile court. (3). If our recommendations for changes in the Act are adopted, many children now dealt with informally because of very young age or the minor nature of their misconduct will no longer be subject to the designation "juvenile delinquent", with its attendant consequences. This should reduce, to some extent, the need for informal dispositions by police officers.

197. Where the police are authorized to exercise discretion in relation to juveniles we suggest that certain principles should be accepted to avoid the

dangers that are apt to be present, most particularly those of arbitrariness and lack of harmony between the goals sought by the legislator and the practices followed in administering the law. (4). These principles are as follows:

- (1) The police should bring to the attention of the juvenile court every child who they have reasonable grounds to believe has committed an offence to which the Act applies;
- (2) The juvenile court should assign an officer of the court to be responsible for instituting proceedings in the court. In deciding whether proceedings should be commenced this officer should be guided by considerations such as the following:
  - (a) children whose conduct involved a risk of serious bodily harm to another person should be charged;
  - (b) other children should be charged if
    - (i) they have previously engaged in anti-social conduct, or
    - (ii) after a conference called by this officer with representatives of the police and agencies that know the child and his family the officer feels that a court appearance is necessary or desirable;
- (3) Records should be maintained of all cases of informal disposition so that if a child is brought before the court the judge will be in a position to know about the child's prior anti-social conduct.
- (4) In deciding whether it is necessary to take physical custody of the juvenile the police officer should recognize that the removal of a juvenile from his home and his physical delivery to a court is an emergency measure only. Any doubts should be resolved in favour of leaving the juvenile in his home pending court appearance;

- (5) Discretion should never be exercised with the idea of punishment in mind. It is because of a punitive attitude on the part of a small minority of officers that the police are most often criticized for misuse of their discretionary powers. This is particularly so in regard to detention practices.

198. The law governing the questioning of juveniles and the obtaining of admissions from them has traditionally been stated as being the same as that which applies in the case of adults. The most important test of legality is the admissibility of a statement in evidence, the criterion of admissibility being one of "voluntariness". Thus a police officer must carry out his questioning in a way that will ultimately satisfy the court that any statement obtained was made voluntarily. Important questions have been raised concerning the adequacy of this approach to admissions by juveniles. (5). To begin with, what is meant by a "voluntary" statement by a young person to the police? Does not the very authority of a police officer bring a strong element of coercion to any situation in which the person questioned is a child? Perhaps an even more basic question is this: Should the law require more than a mere indication that a statement was made voluntarily and require also proof that the statement was made with full knowledge and understanding of the consequences of making it? Consider, for example, a case where the juvenile court waives its jurisdiction in favour of the ordinary criminal courts. In responding to police questioning a young person may reasonably expect that he will be dealt with in the juvenile court. When he finds himself before an adult court is it altogether fair that his statement should be admitted in evidence on proof of its "voluntariness" alone? Traditionally it has been said that the criterion of "voluntariness" is addressed, not primarily to any question of fairness as such, but to the probable trustworthiness of the statement. But is there not implicit even in this explanation of the law an assumption - made explicit in what are known as the Judges' Rules - that the person questioned is at least capable of making a mature judgment as to where his best interests lie? Questions such as these have been asked in a number of recent judicial decisions, notably by the Ontario High Court of Justice (6) and, in the United States, by the Court of Appeals for the District of Columbia (7) and by the United States Supreme Court. (8).

199. Having regard to the peculiar vulnerability of juveniles in the matter of police questioning, there have been suggestions that juveniles should be questioned by the police only in the presence of a relative or other suitable adult adviser and, further, that statements taken without this protection should not be admissible in evidence. (9). We think that, as a general rule, if a child is to be questioned by the police - and particularly if he is to be invited to make a statement that may be used against him - an adult who is concerned with protecting the child's interests should be present. This point has been stated forcibly in one decision, as follows: "We deal with a person who is not



equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests .... He would have no way of knowing what the consequences .... were without advice as to his rights - from someone concerned with securing him those rights - and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself." (10). In so far as proceedings in the juvenile court are concerned we think that the matter of the admissibility of any statement taken in the absence of adult advice can be left to the discretion of the juvenile court judge. However, we do suggest that the law should provide specifically that no such statement should be admissible in the ordinary criminal courts.

200. It will be readily appreciated that the police, in carrying out their basic functions in relation to juveniles, must co-operate with a number of community agencies if the efforts of all concerned are to be effective. Police policies will often be determined to a considerable extent by the attitude of the juvenile court. In any event the police must have a clear understanding of juvenile court policies and procedures. From meetings held with police officers and juvenile court judges we obtained the impression that the relationship between the two in Canada is on a very good footing. The only areas of criticism noted - a failure of some police officers to appreciate the philosophy of the juvenile court, and a lack of understanding by some judges of the special difficulties and problems of police work - could be met by educational programs for both groups. Apart from the administrative difficulties involved in police relationships with other social agencies, a further problem may arise because the persons with whom the police are frequently in contact are often trained social workers. We are told that the problem results in part from an occasional tendency by social workers to downgrade the police officer because he is likely to have less formal education or because he is considered to have an overly punitive attitude. On the other hand the police officer often criticizes social workers for their failure to understand the legal implications of police work. Here also educational programs for both groups would be most beneficial.

201. It is generally accepted that juvenile offenders - a group with special problems and governed by special laws - should be dealt with by police specialists in the field. None the less Canada is somewhat behind some jurisdictions in this aspect of law enforcement. (11). For the most part the larger cities do have special units. The police administrators in a number of cities that do not have such units stated that they would welcome the addition of a juvenile bureau to their departments but gave budgetary problems and manpower shortages as reasons for not being able to provide this service. In rural areas major difficulties would confront the police forces if special juvenile details were to be included in their establishments. Members of the Royal Canadian Mounted Police, the Ontario Provincial Police and the Quebec Provincial Police are deployed over extensive areas, quite often

at posts staffed by only one or two officers. It would be impractical and unnecessary to assign special juvenile details to individual detachments or posts under such circumstances.

202. Although there is no standard method of organizing a police department for specialized work with juveniles, three more or less distinctive patterns emerge:

- (1) The juvenile detail is quite specialized and may be somewhat autonomous. It assumes responsibility for every investigation where it is known that a juvenile is involved. It is also responsible for much preventive work as well as the preparation and presentation of cases before the juvenile court.
- (2) The juvenile detail shares responsibility for the investigation of cases involving juveniles with the operational sections of the department such as the patrol, traffic or detective divisions. Under this system the juvenile unit may be called into an investigation at any time to assist other divisions, or it may undertake difficult cases from the outset.
- (3) The juvenile detail exercises a supervisory function. It does not undertake field investigations. Case files are studied and the decision on further action - warning, referral to an agency or to the court - is made by this unit.

203. Even in those cities where the police force has a juvenile detail a child's first experience with the police is likely to be with an ordinary officer rather than with a member of the detail. This points out the importance of the training of the police to handle juvenile work. The police department cannot be satisfied merely because it has a specialized unit. Such a unit can be useful in assisting the chief police administrator in formulating and applying the overall departmental policy for dealing with juveniles; in investigating some "non-action" complaints and following up "action" situations after the line officer has taken initial steps; in reviewing all reports dealing with police contact with juveniles; and in performing liaison functions with other agencies in the community dealing with children involved with the police. The problem is to ensure harmonious relations between the juvenile unit and

other branches of the department. There should be one philosophy throughout the entire department for dealing with juvenile offenders - not one philosophy in the juvenile unit and a different one in other divisions. (12).

204. Above all we see the need for the increased training of every police officer in juvenile work. (13). The police trainee should be taught how to question children. He should be taught the essential features of the Act and the philosophy and function of the court and its ancillary services. In a democratic society the police officer should be a firm but courteous representative of constituted authority. These characteristics are desirable where the police are dealing with adults. In dealing with children they are essential.

Detention Facilities and Practices

205. The custody of children has been a matter of public concern for many years. A significant event in the development of specialized treatment of juveniles was the enactment of the Children's Protection Act of Ontario in 1893 which provided that no child under sixteen years of age could be held for trial or undergo sentence in any place of confinement in company with adult prisoners. The effect of this legislation was quite limited because it was confined in its operation to offences against provincial statutes. To remedy this defect Parliament enacted legislation in 1894. The forerunner of the present Act, enacted in 1908, contained provisions identical to the present relevant sections. These provide, in part, as follows:

" 13. (1) No child, pending a hearing under the provisions of this Act, shall be held in confinement in any .... place in which adults are or may be imprisoned, but shall be detained at a detention home or shelter used exclusively for children ....  
.....

(3) This section does not apply to a child as to whom an order has been made pursuant to section 9.

(4) This section does not apply to a child apparently over the age of fourteen years who .... cannot safely be confined in any place other than a gaol or lock-up.

" 14. (1) Where .... there is no detention home used exclusively for children, no incarceration of the child shall be made or had unless .... such course is necessary in order to insure the attendance of such child in court.



(2) In order to avoid, if possible, such incarceration, the .... promise .... of any .... proper person, to be responsible for the presence of such child when required, may be accepted ....

" 15. Pending the hearing of a charge of delinquency the court may accept bail for the appearance of the child .... as in the case of other accused persons."

206. The most striking feature of the situation in Canada is the almost complete lack of detention homes to serve rural areas, smaller towns and cities and areas that are sparsely populated. We were told of cases where police officers in rural areas were forced to hold a juvenile in a hotel room or keep him in living quarters attached to the police office. In many instances use is made of local prison cells or lock-ups, although every effort is made to keep the child away from adult prisoners. A few of the larger urban centres do have well-designed detention facilities. These range from old-style converted residences to a wing of an adult jail. In the latter case the juveniles, although separated physically from adult prisoners, are usually attended by the same uniformed guards. Occasionally a nearby training school is the only resource available and is used for detention.

207. In many parts of Canada there appears to be a lack of awareness of the true purpose of detention. For example, only in some of the larger urban areas are detention screening policies employed. All too often, contrary to the original aim of the Act, detention has been used for the convenience of the police or an agency conducting a social investigation for the court, rather than for the good of the child. In some areas detention is used as a primitive punitive device by the police and occasionally by juvenile court judges. That is, juveniles are placed in detention and then released without a charge being brought. Although precise figures on the average length of a juvenile's stay in detention in Canada are not available, it was noted that its duration varied from a few hours (until the next sitting of the court) to as much as three months (pending a clinical assessment). We also observed that in many places detention facilities are used for different types of children - including care and protection cases in some areas - without means of or attempt at segregating them. To complete the picture it should be noted that, apart from a few of the larger centres, the professional staff necessary to plan and supervise the activities that would be desirable are not available. The situation with regard to clinical staff for diagnosis and assessment is the same.

208. Our recommendations are based upon what we conceive to be the proper purposes of detention. We recognize that different approaches have been taken on this question in the United States and in the United Kingdom. Under the English system a variety of uses for the remand home - the basic facility - are authorized by statute. (14). These include custody of children who are

charged with offences, pending their appearance in court; who are alleged to be in need of care or protection, or beyond control, and who require to be lodged "in a place of safety" pending consideration of their cases by a court; who are detained after committal to an approved school and are awaiting a vacancy; or who have been committed for a period of detention not exceeding one month. In addition, there is statutory authority for the use of remand homes to accommodate children committed to the care of local authorities. The present remand home system was endorsed by the Ingleby Committee. (15). On the other hand, in the United States a more limited use for detention is recognized, extending only to "the temporary care of children who require secure custody in physically restricted facilities pending juvenile court disposition or transfer to another jurisdiction or to an agency to which they have been committed by a court." (16). This conception of detention does not comprise "shelter care" for children not requiring secure custody or the use of detention facilities as a short term treatment device. (17). The United States Children's Bureau has declared:

" The primary purpose should be the holding of children needing secure custody rather than that of providing study and treatment. This should be the case even though the detention experience can contribute greatly to the study and treatment process. This does not mean that the wealth of diagnostic information available during the period of detention should not be used as much as possible. Nor does it imply that staff capable of making diagnostic observations and evaluations are not necessary or that the detention program should not be operated in such a way as to facilitate the diagnostic process. Nor should it be assumed that 'treatment' does not occur while the child is in detention or that the facility should not concern itself about a 'treatment-oriented' program. To the contrary - all of these are necessary if detention is to serve a constructive purpose." (18).

209. There are two stages in the juvenile court process that seem to us to require different treatment: that of proceedings prior to an adjudication of delinquency and proceedings subsequent to the adjudication. In the first stage we can see no need to differentiate between the juvenile and adult offender to the detriment of the juvenile. Detention should only be used to ensure that the child will appear in court to answer the allegations against him. Neither the court nor the police are given - nor should they be given - the legal power to use detention as a sanction prior to an adjudication of delinquency. It is unfortunately true that there has been misuse of detention facilities by some police officers and juvenile court judges. In our opinion the proper criteria

for the use of detention in connection with the first stage are those formulated by the National Probation and Parole Association (now the National Council on Crime and Delinquency) in the United States. (19). Detention should be reserved for:

- (a) children who are almost certain to run away during the period when the court is studying the case or between disposition and transfer to an institution or another jurisdiction;
- (b) children who are almost certain to commit an offence dangerous to themselves or to the community before the court disposition or between disposition and transfer to an institution or another jurisdiction; and
- (c) children who must be held for another jurisdiction, for example, parole violators, runaways from institutions to which they were committed by a court, or certain material witnesses.

210. The first official to apply these criteria to the particular case is the police officer. However, his opinion should not be binding on those responsible for the operation of detention facilities. It is most important that the criteria be understood and applied by all who come into contact with the juvenile. The person ultimately responsible for this understanding is the juvenile court judge.

211. There is another respect in which we see no need to differentiate between the treatment given to juvenile and adult offenders at the stage prior to an adjudication. The Criminal Code provides that when a peace officer arrests a person he "shall . . . . take or cause that person to be taken before a justice to be dealt with according to law . . . . within a period of twenty-four hours after the person . . . . has been arrested by the peace officer" or, where a justice is not available within that period of time, "the person shall be taken before a justice as soon as possible." (20). No similar provision is contained in the Juvenile Delinquents Act. Nor does it appear that the Act can be readily interpreted as incorporating this requirement of the Criminal Code in so far as the arrest of juveniles is concerned. It seemed evident to the Committee, from incidents brought to our attention, that there are many persons who are not aware that there is an obligation to bring young persons promptly before the court. The juvenile court legislation of at least one province makes express provision for "prompt production" of the child. (21). We think that such a provision should appear in the federal Act and recommend accordingly. (22).

212. Later in this Report we deal with the proper use of detention facilities after a finding of delinquency. At this stage we are concerned with



methods for obtaining adequate facilities for the purposes suggested in the preceding paragraphs. A number of communities have attempted to meet the problem by the use of foster homes. However, these are inadequate for the particularly difficult child who requires secure custody. Other alternatives suggested to us were the purchase of detention care by smaller communities from adjoining larger localities, or the joint construction and operation of detention homes by groups of communities, or the construction of detention facilities on a regional basis. Inherent in all of these suggestions is the basic problem of what the role of the federal government should be. It is clearly impossible for municipal governments or even some provincial governments to provide proper facilities in large, sparsely populated areas. Historically, detention facilities have been regulated by the provincial governments. The federal government can help by setting standards to be observed and by providing financial assistance to provinces and municipalities whose facilities satisfy the minimum federal standards.

### Protection of the Child Witness

213. Considerations of treatment prior to a judicial determination of delinquency brings us to a related problem that we think it appropriate to discuss under this heading. This concerns the position of a child who is a victim of, or a witness to, a criminal offence.

214. Through the juvenile court process the child who is an offender is afforded many safeguards under the law. It is somewhat ironic, therefore, that when the child is not the offender, but the victim, or but a mere observer, the principal concern of the law has been with matters relating only to the child's competence as a witness. Attention has focused on such questions as the child's capacity to understand the nature of an oath, his ability to recollect and narrate intelligently, to appreciate his moral duty to tell the truth, the weight that is to be given to his evidence, and the like. It is true that a judge has authority under the Criminal Code to exclude the public from the court-room in some circumstances. (23). Also, as we shall indicate later, there is provision for dealing with some charges against adults in the juvenile court. (24). But beyond this very little ingenuity has been employed in devising ways to protect children from the very real dangers of this situation. These include the damage to personality that an unskilled police examiner may inflict, the effects of repeated questioning and of keeping an incident alive for the purpose of a long-delayed trial, the hazards of cross-examination and, on occasion, even the harm that a child may do to himself through the unanticipated consequences of his own fabrication.

215. In meetings with the Committee a number of persons made reference to an arrangement adopted by Israel in 1955. (25). Having regard to the importance of this entire question we think that the Israeli plan merits careful study. The aim of the scheme is twofold: to keep children under fourteen out of court where this seems to be desirable for their welfare, and to place the investigation of

certain kinds of cases completely in the hands of persons who are suitably trained in the elements of mental hygiene. A report on the new law lists its principal features as being the following: (26).

- (1) No child under fourteen years can be investigated, examined or heard as a witness in the matter of an offence against morality except with the permission of a youth examiner.
- (2) A statement by a child as to an offence against morality committed upon his person, or in his presence, or of which he is suspected, may not be admitted in evidence except with the permission of a youth examiner.
- (3) Youth examiners can be appointed only after consultation with an appointment committee consisting of a judge of the juvenile court, an expert in mental hygiene, an educator and an expert in child care.
- (4) Evidence as to an offence against morality taken and recorded by a youth examiner and any minutes or report of such an examination concerning such an offence prepared by a youth examiner are admissible as evidence in court.
- (5) Where such evidence has been submitted to the court the youth examiner may be required to re-examine the child and to ask him a particular question, but he may refuse to do so if he is of the opinion that further questioning is likely to cause psychic harm to the child.
- (6) A person may not be convicted on evidence given by a youth examiner unless it is supported by other evidence.

216. The scheme as outlined above offers a number of advantages. To begin with, provision for "in camera" proceedings at trial clearly does not go far enough, because much of the harm may be done at the investigation stage. While many larger police departments now have on staff persons who have received some special training to equip them for dealing with children, it remains the primary function of the police to secure evidence whenever it appears that an offence has been committed, and only secondarily to consider the interests of the child involved. Experts in child psychology seem to be of

the opinion that the manner in which questioning is conducted can prove to be quite harmful to some children. Moreover, the very fact of an encounter with the police may sometimes add to the feeling of anxiety that the disturbing event has already produced. It happens, not infrequently we are told, that parents react irrationally to such an occurrence, even punishing the child or acting in a way that the child interprets as punishment. In a highly charged emotional situation of this kind the intervention of a youth examiner would probably be more acceptable than that of a police officer, if for no other reason than the fact that, in the eyes of the family, the youth examiner presents a less punitive "image" than the police officer. The youth examiner system has the effect of taking the questioning of children, in certain specified situations, out of the hands of the police altogether. The change could well bring with it a number of incidental benefits. The professional experience of the youth examiner, for example, may enable him to be of some assistance to the family, in particular, to advise when referral to a mental health service may be desirable. This same experience may, in fact, enable him to get a full account of the incident where it could not be obtained by police questioning.

217. Another advantage of the youth examiner system relates to the decision-making function in so far as commencing a prosecution or calling a child as a witness are concerned. The police, and sometimes the crown attorney, tend to take the view that, if there is evidence that an offence has been committed, proceedings must be instituted regardless of any possible effect on a child who may be involved. There are times, however, when the danger to the mental health of the child is out of all proportion to any benefit that is likely to result from proceedings against an adult. This is particularly the case where, as not infrequently happens, the child's testimony is the only evidence against an accused, so that the chances of the adult being convicted are problematical. Again, there is the question of a child being required to testify against a parent. Subject to certain exceptions the law has long granted a husband or wife a privilege not to be compelled to give evidence, the one against the other. No equivalent privilege is extended to a child in respect of his parents. And yet it is certainly arguable that the very policies that underlie the husband-wife privilege apply, in large measure, to a child of the family - with, indeed, even greater potential harm to the child's welfare than that of a spouse. (27). Still another problem concerns the danger of unfounded accusations of sex offences. As long ago as 1938 a committee of the American Bar Association reported: "Today it is unanimously held (and we say 'unanimously' advisedly) by experienced psychiatrists that the complainant woman in a sex offence should always be examined by competent experts to ascertain whether she suffers from some mental or moral delusion or tendency, frequently found especially in young girls, causing distortion of the imagination in sex cases." (28). In addition to the substantial danger that exists for the accused in these cases there is, of course, the danger of personality damage to the child who has made the complaint. For these various reasons we think that there may very well be a value in having an officer whose responsibility it is to assess considerations of this kind, to make any inquiries of a social or psychological



nature that seem to him to be necessary, and to make a judgment independent of that of the prosecuting authorities concerning the course of action that seems to be desirable in the interest of the child. Nor would the value of such a system depend necessarily, in our view, upon that judgment being a final or conclusive one.

218. We find unacceptable the part of the Israeli procedure that permits, as a substitute for the attendance of a child witness at trial, the introduction of evidence against an accused of a statement given by the child to a youth examiner. In this respect we agree with the Ingleby Committee, which rejected the Israeli plan, that the adversary system requires that "the bench, or where the trial is before a jury, the jury, should see and hear the witnesses, and the accused should have the opportunity of cross-examining any witness before the court that is trying him." (29). It is important to note, however, that the English legislation, even before the Ingleby Committee, has already made provision for reducing to a minimum the dangers to a child of a court appearance, notably: by authorizing a justice to take the deposition of a child in respect of whom certain offences are alleged to have been committed where a duly qualified medical practitioner gives evidence that attendance at court would involve serious danger to the life or health of the child; by providing for the admission in evidence at trial of such a deposition, subject to certain safeguards; and by permitting the court to dispense with the attendance of the child at trial if satisfied that his attendance is not essential to the just hearing of the case. (30). It was the Ingleby Committee's proposal that this statutory protection be extended by allowing a deposition to be taken wherever the "mental health" of a child is endangered, and by imposing on the prosecutor in each relevant case a duty to consider whether application should be made to a justice or the court to invoke the appropriate section. (31). The protection afforded by English law was, in fact, extended by amendments enacted in 1963. (32). The new legislation provides that, subject to certain exceptions, the prosecution may not call any child under the age of fourteen as a witness at the preliminary hearing of any charge involving a sexual offence. His testimony instead is to take the form of a written statement which is made admissible in evidence. The exceptions, however, are important. They include a defence objection to the statement being admitted and a prosecution requirement for the attendance of the child to establish the identity of any person.

219. The arrangement under the English statute does serve to achieve a kind of balance between two competing policy considerations that are relevant at the trial stage. On the one hand, it is undesirable that a disturbing incident should be kept alive in a child's mind through repeated questioning over an extended period of time. On the other, it is basic to the adversary system that evidence should be subject to cross-examination and that the judge or jury should be able to observe the demeanour of every witness whose testimony is material. We recommend, therefore, that provisions along the lines of these that have been accepted in England be adopted as part of Canadian law.

220. Notwithstanding the value of the English legislation, it nevertheless fails to come to terms with the important issue that is met by the Israeli plan, namely, the need to protect children at the pre-trial, investigation and decision-making stages. It has often been said that setting in motion the machinery of juvenile court proceedings should be regarded as a matter of special public concern, and should not be left to the sometimes random operation of the ordinary criminal process. As the Kilbrandon Committee has observed, the decision whether or not to institute proceedings against a child may often involve "a difficult and delicate exercise of discretion in assessing where the public interest truly lies." (33). We agree with this view, as will be evident from at least one previous recommendation in this Report. (34). The point that we would emphasize here is that, just as any decision to commence proceedings against a child presents an issue of public policy, decisions concerning any proceeding in which a child may be substantially affected can also involve a policy issue of some importance. We recommend, therefore, that the youth examiner system be studied with a view to determining whether some variant of it - excluding features relating to evidence at trial - might profitably be adopted in Canada. We recognize that the responsibility for establishing such an office would rest with any province that wished to introduce the scheme. The principal question that would have to be resolved concerns the extent to which a youth examiner should be permitted to deny to the Crown or an aggrieved party an effective remedy in the criminal courts. On this point some compromise arrangement may be in order, such as a hearing at which the competing policy considerations could be weighed and a decision made, either at a senior administrative or a judicial level, as to whether a prosecution that would necessitate calling a child as a witness should be allowed to proceed. It would be possible to provide under federal legislation that, where a province has appointed a youth examiner, a child under the age of fourteen years could be called as a witness in the matter of an offence against morality only in accordance with the procedure established for reviewing such prosecutions.

#### Footnotes

1. Reference should be made in this connection to the much discussed program introduced some years ago in Liverpool, England. The Liverpool plan is explained in one account as follows: "With the aim of preventing the development of offenders, a scheme was inaugurated in Liverpool in 1949, the basis of which was the appointment of selected officers known as juvenile liaison officers to deal specifically with the prevention of juvenile crime. These officers seek the cooperation and work in association with education authorities, clergy, probation officers and youth organizations. But the specially interesting point about the scheme is that a direct approach is made to the parents of young offenders or of young people who appear to be falling into bad habits or forming associations."

By these means, and with the cooperation of parents, it is reasonable to assume that conditions and circumstances which are conducive to crime may be altered and a very real contribution made to the prevention of crime. The role of the police officer as an adviser to parents is a new one. When certain initial resentment by parents is overcome, it may well prove to be a vital one. Not only may it result in reducing juvenile crime, but, by reason of the opportunity it affords of intimate contacts with families, it may completely alter the attitude of certain sections of youth towards the police....". Adams, "The Police and Youth," (1956) 29 The Police Journal 273, at p.280. The Liverpool plan has proved to be controversial. The same author continues: "But great care must be taken. Unorthodox attempts to deal with youthful offenders may often prove disastrous." Adams, *supra* at p.280. The Ingleby Committee, after considering the arguments for and against the scheme, concluded: "It seems clear....that the process of 'following up' the caution by a period of supervision, help and guidance for the child and his family involves the juvenile liaison officer in work that nowadays is recognized as a skill to be acquired by special training in case-work which the juvenile liaison officer has no opportunity to receive. It is work that should be done by other social agencies." Ingleby Committee, para. 147, p.51. For a further comment on the juvenile liaison officer concept, see Cavenagh, The Child and the Court (1959), pp.137-145. Schemes for voluntary police supervision have also received a mixed reaction in the United States. See, for example, U.S. Dept. of Health, Education and Welfare, Police Services for Juveniles (Children's Bureau, 1954), pp.24-27.

2. Report of the Governor's Special Study Commission on Juvenile Justice (California, Part 11, 1960), pp.84-85. We take note, for example, of the following observations contained in one submission to the Committee: "The police are of particular importance. They are important not only because of the opportunity they have to identify the problem, but also because their management of the individual has an extraordinarily important impact upon the subsequent history of delinquency in a particular individual....The whole legal process starting with the apprehension of the juvenile in the community through his detention to his final disposal, is a process requiring the greatest understanding of individual personality and social dynamics, and provides a first-class opportunity for trained personnel to engage in a preventive programme." Brief submitted by the Department of Psychiatry of the University of British Columbia (1962), pp.6-7. The training of police officers to deal with the special problems presented by children and young persons is, for this reason, a matter of considerable importance. Still another aspect of prevention in relation to the police function that merits attention is outlined in a recent submission to the Ontario Select Committee on Youth: "Consideration should be given to the recommendation....that



children .... be given a basic knowledge of the country's legal system and of the possible sanctions which can be employed to those who disregard the regulations concerning conduct and behaviour and the rights of others. This recommendation could be made doubly effective, if where-ever possible, police officers contributed to the teaching involved. There is little doubt that there are many young people who are contemptuous of, and hostile towards, police authority and this situation is not likely to change unless every opportunity is provided for young people and police to meet and be encouraged to better understand each other's feelings and attitudes and the reasons underlying them." Canadian Mental Health Association, Ontario Division, Brief to the Ontario Legislative Assembly Select Committee on Youth (1964), p.7.

3. The question is one that has caused concern among some juvenile court judges in Ontario. One committee has observed: "Your Committee is .... concerned about the trend which indicates police officers sometimes specially selected are increasingly dealing with juvenile delinquency and exercising their own discretion whether to bring a charge or warn the juvenile .... The present activities of police officers are preventing the Probation Officers maintaining proper statistics on delinquencies, and in many cases allows the child's delinquent tendencies to develop too long before the matter comes to the attention of the Court...". Report of the Standing Committee on Probation, Association of Juvenile and Family Court Judges of Ontario (Sept. 28, 1962, as revised March 28, 1963), pp. 10-11.
4. A useful discussion of the problem, relatively little explored, of bringing the practices followed in the administration of the law into harmony with the goals sought by the legislator can be found in Goldstein, "Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice," (1960) 69 Yale Law Journal 543. See also La Fave, Arrest: The Decision to Take a Suspect into Custody (The Report of the American Bar Foundation's Survey of the Administration of Criminal Justice in the United States, Remington ed., 1965), Part 11 on The Decision Not to Invoke the Criminal Process.
5. See generally Note, "Due Process Reasons for Excluding Juvenile Court Confessions from Criminal Trials," (1962) 50 California Law Review 902; Note, (1962) 46 Minnesota Law Review 967.
6. Regina v. Yensen, (1961) O.R. 703, 130 C.C.C. 353. But see Fox, "Confessions by Juveniles," (1963) 5 Criminal Law Quarterly 459.
7. Harling v. United States, (1961) 295 F. 2d. 161 (D.C. Cir.).
8. Gallegos v. Colorado, (1962) 370 U.S. 49.

9. In this connection, see the rules for the questioning of juveniles suggested by the court in Regina v. Jacques (1958) 29 C.R. 249, at p.268 (Quebec Social Welfare Court). See also Myren and Swanson, Police Work with Children (U.S. Dept. of Health, Education and Welfare, Children's Bureau, 1962), pp.34-35. A related question of some importance concerns the matter of police questioning of children at school. There are obvious dangers for the child in this situation and care should be taken to minimize the possibility of harm. For a useful comment on police relations with the schools, see Report of the Governor's Special Study Commission on Juvenile Justice, Part 11, pp.111-113.
10. Gallegos v. Colorado, 370 U.S. 49, at p.54.
11. In a survey conducted in the United States in 1959, a specialized officer or unit was reported in 89 per cent of cities over 10,000 responding to a questionnaire, in 72 per cent of cities between 50,000 and 100,000, and in 52 per cent of cities between 25,000 and 50,000. Greenblatt, Staff and Training for Juvenile Law Enforcement in Urban Police Departments (U.S. Dept. of Health, Education and Welfare, Children's Bureau, 1960), p.4.
12. For a discussion of the development of specialized police services for juveniles and the role of the juvenile unit within the police organization, see Myren and Swanson, op. cit. supra note 9, pp. 1-17.
13. It is important that as many police officers as possible obtain some training for work with juveniles. In addition, there would appear to be a need for the development of specialized courses for the training of specialists in juvenile work. The selection of juvenile specialists in Canada has been made almost solely on the basis of job interest and aptitude for work with children. Training for the most part consists of on the job training under the supervision of an experienced juvenile officer. In-service training material on this phase of youth work is quite limited. In the United States, short-term institutes and workshops, some offering certificates or university credits, have been in operation for several years. Probably the best known of these are the 12-week Delinquency Control Institute at the University of Southern California and the 10-week Juvenile Officers' Institute at the University of Minnesota. See generally Kenny and Pursuit, Police Work with Juveniles (1954), pp.60-66; Juvenile Delinquency: A Report on State Action and Responsibilities (Prepared for the Governor's Conference Committee on Juvenile Delinquency by The Council of State Governments, The President's Committee on Juvenile Delinquency and Youth Crime, and The National Council on Crime and Delinquency, 1962), pp.15-17. A recent survey undertaken in British Columbia concluded: "In view of the special training needs of the many juvenile officers in our various police departments, and in view of the key role which police play in the prevention, treatment and

control of juvenile delinquency in the community - It is recommended that in consultation with municipal administrations and police chiefs, special advanced training courses for police officers in juvenile work be established in our universities." Gorby, A Report and Recommendations on Co-ordination of Youth Services in Greater Vancouver and Greater Victoria (1964), p. 10. We lend our support to that recommendation. A basis for a possible federal contribution in this area is suggested in the Conclusion of our Report.

14. See Ingleby Committee, paras. 385-386, pp. 113-114.
15. Ingleby Committee, para. 403, p. 118. See also para. 317 at p. 97, para. 390 at p. 115, and paras. 398-401 at pp. 116-117.
16. This is a formulation of the National Probation and Parole Association, quoted in Governor's Special Study Commission on Juvenile Justice, Part 11, p. 70.
17. See National Probation and Parole Association, Standards and Guides for the Detention of Children and Youth (1958), pp. 1-2; U.S. Dept. of Health, Education and Welfare, Standards for Specialized Courts Dealing with Children (Children's Bureau, 1954), pp. 20-21 and 45-47. The Children's Bureau have observed: "The need for security measures in detention care, and a more relaxed atmosphere in shelter care, and the difference in the age groups served (generally it will be an older child who needs detention care) require different physical settings and programs. Because of these requirements, it is extremely difficult if not impossible to provide detention care and shelter care in the same physical setting and still meet acceptable standards for each type of care." Standards for Specialized Courts Dealing with Children, p. 21. The general desirability of segregating delinquent and non-delinquent children was also recognized by the Ingleby Committee. See Ingleby Committee, paras. 405-409, pp. 118-119.
18. U.S. Dept. of Health, Education and Welfare, Detention Planning (Children's Bureau, 1960), p. 4.
19. Standards and Guides for the Detention of Children and Youth, p. 15. Also defined are the situations that do not justify detention. These include: (a) children who are not almost certain to run away or commit other offences before court disposition or between disposition and transfer to an institution or another jurisdiction; (b) neglected, dependent, and nondelinquent emotionally disturbed children, and delinquent children who do not require secure custody but must be removed from their homes because of physical or moral danger or because the relationship between child and parents is strained to the point of damage to the child; (c) children held as a means of court referral; (d) children held



for police investigation or social investigation who do not otherwise require secure custody; (e) children placed or left in detention as a corrective or punitive measure; (f) psychotic children, and children who need clinical study and treatment and do not otherwise need detention; (g) children placed in detention because of school truancy; (h) children who are material witnesses, unless secure custody is the only way to protect them or keep them from being tampered with as witnesses. Standards and Guides for the Detention of Children and Youth, pp. 16-17. In some of these situations, of course, it may be necessary that a child be removed from his home and placed in shelter care or in some other appropriate facility.

20. Criminal Code, s.438.
21. The Juvenile Court Act, Revised Statutes of Alberta 1955, c.166, ss.21 and 22.
22. See, for example, the Standard Juvenile Court Act, which provides, in part, as follows: "The officer or other person who brings a child to a detention or shelter facility shall at once give notice to the court, stating the legal basis therefor and the reason why the child was not released to his parents. The person in charge of the facility in which the child is placed shall promptly give notice to the court that the child is in his custody. After immediate investigation by a duly authorized officer of the court, the judge or such officer shall order the child to be released, if possible, to the care of his parent, guardian or custodian, or he may order the child held in the facility subject to further order or placed in some other appropriate facility. As soon as a child is detained, his parents shall be informed, by notice in writing on forms prescribed by the court, that they may have a prompt hearing regarding release or detention....". The Act further provides: "No child shall be held in detention or shelter longer than twenty-four hours, excluding Sundays and holidays, unless a petition has been filed. No child may be held longer than twenty-four hours after the filing of a petition unless an order for such continued detention or shelter has been signed by the judge or referee." National Council on Crime and Delinquency, Standard Juvenile Court Act (6th ed., 1959), s.17 and comment at pp.40-42.
23. Criminal Code, s.428.
24. See infra Chapter X.
25. Law of Evidence Revision (Protection of Children) 5715-1955.
26. Reifen, "Protection of Children Involved in Sexual Offences: A New

Method of Investigation in Israel," (1958) 49 Journal of Criminal Law, Criminology and Police Science 222, at p.224.

27. One eminent student of the law of evidence has observed: "The present system of compulsory attendance and disclosure is unbearably inflexible....There are very few rules which permit nondisclosure on grounds that compulsory disclosure would invade an interest of the witness - that is, on grounds that disclosure would cause undue harm to the witness or to something or someone dear to him....The law takes the position that the relationship between the degree of materiality of the evidence and the degree of anguish caused the witness by its disclosure is irrelevant....A useful purpose would be served by a thorough analysis of the whole concept of compulsory testimony. Among the questions to be asked are: (1) What are the 'hard-core' areas in which the need for information or the harm to the witness is always so great or so small as to require that disclosure be compelled or privileged, as the case may be? ....". McNaughton, "The Privilege Against Self-Incrimination," (1960) 51 Journal of Criminal Law, Criminology and Police Science 138, at pp.149-150 and n.52.
28. Quoted in 3 Wigmore, Evidence (3rd.ed., 1940), art. 924a, p.466. See generally 3 Wigmore, art. 924a, pp.459-466; Machtinger, "Psychiatric Testimony for the Impeachment of Witnesses in Sex Cases," (1949) 39 Journal of Criminal Law, Criminology and Police Science 750.
29. Ingleby Committee, para.262, p.82.
30. Children and Young Persons Act, 1933, 23 Geo.5, c.12, ss.41-43.
31. Ingleby Committee, para.262, p.82.
32. Children and Young Persons Act 1963, 11 & 12 Eliz.2, c.37, s.27.
33. Kilbrandon Committee, para.97, p.47.
34. See supra para. 197.





## CHAPTER VIII

### THE JUVENILE COURT

221. In this Chapter we are concerned with the operation of the juvenile court. The matters that we examine include the qualifications and appointment of juvenile court judges, the role of the juvenile court committee, procedure and practice in the juvenile court, rules of court and the right of appeal.

#### The Juvenile Court Judge

222. At the present time three different types of judges preside over juvenile courts in Canada: specialized juvenile court judges (provincial appointees), magistrates (provincial appointees) and county court judges (federal appointees). In almost all cases, however, judges of the juvenile courts are selected to serve on those courts by provincial authorities. No professional conditions of qualification are by law required of persons appointed as magistrates or specialized juvenile court judges. Persons selected in the past have had experience in the business world as well as in fields such as social work, law, divinity, education, psychology and police work. The juvenile court is financed in the same way as are other provincial courts, except that in many cases the financial responsibility is left with the municipality. In practice this means that the juvenile court judge often has the burden of obtaining funds for his court from various governmental bodies. The objection that has been made to a local system of financing is that it makes the successful operation of the court dependent upon the co-operation of local authorities, who sometimes are more concerned about the tax rate than they are about ensuring a proper solution of the community's social problems. In some communities, of course, economic conditions may be such that adequate finances are totally lacking. One consequence of this system of financing is evident in any event: that the level of performance of the juvenile court varies considerably, not only from province to province, but even from municipality to municipality within the same province.

223. In many areas of Canada the local magistrate or county court judge performs juvenile court duties on a part-time basis. It has been represented to us that the judge of the juvenile court should devote his full time to that work, and that the use of magistrates and county court judges for juvenile court purposes is ill-advised. In support of this view it is said some magistrates and county court judges find it difficult to adjust their approach to the specialized philosophy of the juvenile court in the afternoon when, on the morning of the same day, they were involved in the trial of a hardened criminal. It is said also that where the two functions are combined there is a tendency to neglect juvenile cases, since these often require a great deal of time. On the other hand there may not be a sufficient number of juvenile cases to justify the appointment of a full-time juvenile court judge. The use of the local magistrate or county court judge in these circumstances would seem to be sensible in the absence of a better system. However, a better system is available.

In several of the American states a state-administered and state-financed juvenile court scheme has been in operation for some time. In Utah, for example, the work of twenty-six ex-officio juvenile court judges was taken over by four full-time judges and one part-time judge. (1). One Canadian province recently adopted a circuit juvenile court system. (2). We recommend that these systems be studied with a view to introducing some such approach in every province in Canada.

224. The questions that we now have to resolve are: (a) what qualifications should be required of juvenile court judges? (b) what methods can be devised to ensure that the person who is appointed a juvenile court judge does possess those qualifications? The answer to the first question depends largely upon the powers it is thought proper to give to the judge. If he is to be responsible for both the fact-finding and disposition functions, as he is under the present Act, presumably he will require qualifications different from those necessary for a judge who is responsible for fact-finding alone. We think that the judge should retain his present powers. The suggestion that the disposition process should be vested in an expert administrative board - presumably composed of psychiatrists, psychologists and social workers - is based, in our opinion, upon a somewhat overly simplified view of the purposes of the criminal law. Those who advance this suggestion tend to assume that the sole function of the sentencing authority is to impose a sentence that is likely to rehabilitate the offender. This is a paramount function, but certainly not an exclusive one. The purposes to be achieved in a sentence are many and often conflicting - and this remains true, if to a lesser extent, even in a juvenile court proceeding. Not only must the court attempt to rehabilitate the offender, it must also be concerned with protecting the public against future offenders and with protecting the offender himself from excessive or inhumane detention or treatment methods. It is important to recognize also that we know little about the effect that any particular disposition of a case will have upon a particular offender. In this situation, where the liberty of the subject is at stake, it seems to us to be the better part of wisdom to leave the power of disposition with the judiciary.

225. The conclusion to be drawn, we suppose, is that ideally a judge of the juvenile court should possess the legal knowledge of a justice of the superior court and the knowledge of personality dynamics and social resources of a psychiatrist or of a social worker. Obviously such knowledge is rarely combined in one individual. For this very reason it is the practice in a number of European countries to appoint a joint bench in juvenile court cases. (3). Usually a professional jurist presides, assisted by one or more experts or laymen who are present either in the capacity of assessor - that is, as a member of the court itself - or that of official adviser to the court. The American practice is to require a legal background in persons appointed to the juvenile court. While we think that this qualification is perhaps desirable, we doubt that it is essential. The fact-finding process in which legal training is useful is only one aspect of the court's work. It is important to bear in mind also that more than

ninety per cent of accused children admit the charges against them. (4). We recognize that the court must be alert to avoid those violations of civil liberties that have occurred in the juvenile courts of Canada as well as those of the United States. Here also legal training would be helpful. (5). However, we think that if persons of adequate intellectual powers and human experience are appointed, the amount of legal knowledge that would be required to enable them properly to perform their functions could be learned under a training program. We have already considered elsewhere the way in which the provisions of the Act relating to waiver of jurisdiction might be altered to assist the juvenile court judge in dealing with cases that involve difficult questions of law or fact. (6).

226. The juvenile court judge must know enough law to be able to conduct a hearing in accordance with legal principles. On the other hand, to make a proper disposition of a case after an offence is proven the judge needs only a general understanding of youth, a familiarity with the resources available to the court, and sufficient knowledge of the social sciences to weigh the advice that is given to him by experts in these fields. For this reason we do not think that a professional background in psychiatry, psychology or social work is essential for a juvenile court judge. It is those responsible for the carrying out of treatment that require special qualifications of this kind, rather than the person responsible for the decision as to the form of treatment that is to be given by those competent to give it. However, we do think that a new appointee, whether lawyer, psychologist or social worker, should ordinarily receive a specialized program of training, covering such matters as the principles of child psychology and personality development, the prevention and treatment of delinquent behaviour, juvenile court law and the rules of evidence, and the organization and administration of a juvenile court. So far as possible, such training should be given before a judge assumes his duties. In recent years, specialized courses and institutes for juvenile court judges have been developed in the United States. (7). We recommend that steps be taken to make this kind of training available to Canadian judges. Implementation of this recommendation would, in our view, constitute a valuable first step in the direction of establishing professional qualifications for judges of the juvenile and family courts of this country.

227. It is no reflection on the vast majority of judges to say that on occasion one of their colleagues was appointed for reasons apparently unrelated to his judicial abilities. It seems to us, however, that lack of competence in a juvenile court judge is less to be tolerated than it is in the case of an adult court judge. This is so because the juvenile court judge has a greater unsupervised discretion, and also because those who appear before the juvenile court are more likely to suffer personality damage by reason of mistakes that might be made by the court. We have mentioned that a juvenile court judge is provincially appointed. His salary would seem to be inadequate to attract, in most provinces, the calibre of persons required. Although the federal government has the constitutional power to appoint its own judges, and on



rare occasions has done so, we think that juvenile court judges should continue to be appointed by the appropriate provincial authorities. However, we would lend our support to the proposal made by a number of groups that judges should be selected only from names recommended by an advisory group consisting of representatives of such fields as education, law, medicine, psychology, religion and social work. Moreover, we would suggest that in any province where this procedure is followed the federal government should consider making available to the province a sum sufficient to increase the salary of the juvenile court judge to that of a county court judge. Public knowledge that highly qualified persons are appointed to the juvenile court bench should serve to enhance the status of both judge and court.

228. In furtherance of this same objective, we recommend that the distinction drawn in the present Act between judge and a deputy judge be abolished. (8). We also take note of a suggestion made by a committee of the Association of Juvenile and Family Court Judges of Ontario that consideration should be given to the appointment of a Chief Juvenile and Family Court Judge who could, in the words of that committee's report, "visit the Courts of the Province able to advise generally, to direct further uniformity in practice, and perhaps relieve Judges in the event they desired to have his assistance in complicated cases, one who could institute measures to ensure further uniformity in matters of financing, in staff arrangements, provision of witness fees and other matters." (9). While we make no specific recommendation in regard to this suggestion, we do commend it to the attention of the various provincial authorities concerned with the constitution of the juvenile courts.

#### The Juvenile Court Committee

229. The Act (section 27) directs that there "shall be in connection with the Juvenile Court a committee of citizens, serving without remuneration, to be known as the 'Juvenile Court Committee'." Section 27 also makes provision for the composition of the juvenile court committee. It provides that in any city or town where there is a children's aid society, "the committee of such society or a sub-committee thereof shall be the Juvenile Court Committee" - and further, that where there is no children's aid society "the court may, and, upon a petition signed by fifty residents of the municipality...shall appoint three or more persons to be the Juvenile Court Committee as regards Protestant children, and three or more persons to be the Juvenile Court Committee as regards Roman Catholic children....". It seems to be the intent of the Act that a juvenile court committee is mandatory, although the wording of section 27 itself is not altogether consistent on this point. In any event, only a few juvenile courts in Canada have the assistance of such committees. (10).

230. The duties and powers of the committee are set out in section 28:

" (1) It is the duty of the Juvenile Court Committee to meet as often as may be necessary

and consult with the probation officers with regard to juvenile delinquents, to offer . . . . advice to the court as to the best mode of dealing with such delinquents, and, generally, to facilitate by every means in its power the reformation of juvenile delinquents.

(2) Representatives of the Juvenile Court Committee who are members of that Committee, may be present at any session of the Juvenile Court.

(3) No deputy judge shall hear and determine any case that a Juvenile Court Committee desires should be reserved for hearing and determination by the judge of the Juvenile Court."

231. The principal questions we have to resolve are: (a) should the provision for a committee remain mandatory or be made permissive? (b) what should be the composition of such a committee? (c) what should be the function of the committee? Because we feel that an answer to this last question will assist in resolving the others we examine it now. Under the present Act the committee's functions are extremely vague. In some ways it seems designed to serve as an adjunct to the probation services; on the other hand it seems that the committee is also intended to act as public watchdog to prevent the juvenile court process from degenerating into Star Chamber proceedings; again, the powers vested in the committee by section 28(3) are intended to ensure that important cases will be heard by the judge of the court rather than by the presumably less qualified deputy judge. Whatever may have been the need for these responsibilities and powers in 1929, many are no longer relevant today. The screening function provided by section 28(3) is unnecessary. The judges of other courts are by law deemed competent to handle all cases within the jurisdiction of their courts and we see no reason for distinguishing, in this respect, between juvenile courts and the ordinary courts. In any event, we recommend elsewhere the abolition of the office of deputy judge.(11). In the early years, the primary role envisaged for the juvenile court committee was probably that of a citizen advisory group in regard to matters of treatment, with perhaps additional service as unpaid probation officers. (12). One submission made to us points out that "the committee's original function as a 'case committee' advising the judge is outmoded now due to the availability of psychiatric and social work resources. . . .". (13). It seems, in fact, to have been the experience in both Canada and the United States that juvenile court committees have seldom attempted to perform a "case committee" function on any regular basis and that, where such attempts have been made, friction between the judge and the committee has frequently been the most notable result.

232. The "public watchdog" or "sentinel" role seems to us to be the proper function for the juvenile court committee to perform. In our system many

organizations, may be interested in the operation of the ordinary courts. It is the organized bar, however, that has been in the forefront in such matters as judges' salaries and pensions and the protection of judicial independence. The juvenile court does not have this type of support from any organization or profession. A juvenile court committee can help to provide such support. There are still other features of the "public watchdog" role. Some of these are suggested in a report prepared by a committee of the Probation Officers' Association - Ontario:

" .....Firstly, since the juvenile court will remain largely a 'private court' with the public having only limited access to it, the committee must serve as the eyes and ears of the citizenry; it must keep abreast of all aspects of the court's operations, interpreting the court to the community on the public platform, and ensuring that the court is functioning in keeping with the legislation governing it, and in accordance with correct judicial processes. The committee can also be of considerable help to the Judge in several specific areas, such as advising and assisting in the operation of any detention or observation home connected with the court, assisting in the obtaining of necessary financial grants for the court's maintenance, and performing a liaison function with municipal or other governments which may be contributing financially to the court. The committee would have the added duty of working for the correction of any conditions tending to foster delinquency in the local community and of working for the establishment of such health and/or welfare services as would tend to reduce delinquency. The central and basic responsibility however would be one of surveillance of the overall operation of the court to ensure that it continues to provide proper and adequate services to its local community." (14).

233. We see the juvenile court committee, then, as a liaison body between the juvenile court and the community. One of its major functions should be that of continuous public education in the community to interpret the purpose and philosophy of the juvenile court and to stimulate the support necessary to enable the court to carry out its objectives. Another should be that of general "watchdog" supervision of the court and the services upon which the court relies. It is our recommendation that in any revision of the law the duties of the juvenile court committee should be redefined in accordance with the role of the committee as we have outlined it.



234. We have received submissions suggesting that the committee should be a permissive one, designed to aid those judges who wish to have its assistance. Other briefs have taken the position that the establishment of a committee should be mandatory. The fact that few juvenile court committees exist in Canada may well be an indication that it is not entirely realistic to make a committee mandatory in all cases. Nevertheless, we think that, so far as practicable, the objective should be to have a committee working with every juvenile court. The functions of the juvenile court committee, as we envisage them, are too important for its existence to depend in every case upon the whim of the judge. The committee's role is not only to assist him, but is also to assure the public that the juvenile court process is operating in a satisfactory manner. In our view, therefore, it would be desirable if steps were taken to promote the establishment of juvenile court committees throughout Canada. It is perhaps worth adding that in no case should the jurisdiction of the court be affected by the existence or non-existence of a committee.

235. In making these suggestions, however, we think it important to note that the establishment, composition and duties of the juvenile court committee are matters that relate more directly to the constitution and administration of the juvenile courts than to any aspect of criminal law or criminal procedure. The constitution, maintenance and organization of the juvenile courts are, as we have pointed out, primarily the responsibility of the provincial authorities. We are of the opinion that the power of decision in regard to these various questions that pertain to the juvenile court committee should rest with the provincial authorities. Indeed, we find it difficult to see how the federal government can take effective action on matters so closely connected with the actual operation of the juvenile courts. It is our conclusion, therefore, that detailed provisions concerning the juvenile court committee - except as they relate to matters of procedure, such as the right of members of the committee to be present at juvenile court hearings - should be removed from the federal Act and that it should be left to the provinces to enact whatever legislation they think desirable.

236. A number of recommendations have been made to us concerning the composition of the juvenile court committee. It has been suggested, for example, that the judge should have the authority to choose the members of the committee, perhaps from a list of persons recommended by civic groups and by various professions such as law, medicine and social work. There have been suggestions also that the Attorney General should have a voice on the question of membership. Again these are matters for decision by the appropriate provincial authorities. While we make no specific recommendation in regard to the composition of the committee, we would make one observation. There would seem to be no reason why a committee performing the functions that we propose should, as the present Act contemplates, be fragmented on religious lines or have its membership drawn only from children's aid societies.

237. Before leaving this discussion of the juvenile court committee, we

think that it may be useful to note a recommendation made by the Governor's Special Study Commission on Juvenile Justice in California, which reported in 1960. The Commission proposed that existing juvenile court committees be merged into a system of regional juvenile justice commissions having wide powers to investigate, study and issue annual reports and recommendations on "the administration of juvenile justice in its broader sense including law enforcement, the courts and probation departments....". (15). The Commission also contemplated that such juvenile justice commissions would have powers of subpoena, as well as the right to visit local institutions and treatment facilities. Even with juvenile court committees as they are now conceived, it may well be desirable, having regard to the practical difficulties in establishing committees in certain areas, to have some committees constituted on a regional basis. This might require, for example, that a committee operate in conjunction with more than one juvenile court. The California plan is apparently intended to go somewhat further than this. For the purpose of this Report, we do no more than suggest that the California proposals would seem to merit study by provincial authorities concerned with providing for the establishment of juvenile court committees or with finding some viable alternative to the present system.

### Procedure and Practices in the Juvenile Court

#### General

238. The importance of the sections which govern procedure in the juvenile court dictates that we should set them out:

" 5. (1) Except as hereinafter provided prosecutions and trials under this Act shall be summary and shall mutatis mutandis be governed by the provisions of the Criminal Code relating to summary convictions in so far as such provisions are applicable ....

" 10. (1) Due notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child .... and any person so served has the right to be present at the hearing.

" 12. (1) The trials of children shall take place without publicity and separately and apart from the trials of other accused persons....

(3) No report of a delinquency committed, or said to have been committed, by a child, or of .... (any proceeding or action under the Act involving a child) .... in which the identity of

the child is .... (in any way) .... indicated, shall without the special leave of the Court, be published in any newspaper or other publication.

" 17. (1) Proceedings under this Act with respect to a child, including the trial and disposition of the case, may be as informal as the circumstances will permit, consistently with a due regard for a proper administration of justice.

(2) No adjudication or other action of a juvenile court with respect to a child shall be quashed or set aside because of any informality or irregularity where it appears that the disposition of a case was in the best interests of the child."

239. In the following paragraphs we examine: (a) the question of publicity in relation to juvenile offenders and the matter of private hearing in the juvenile court; (b) the role of counsel (crown and defence); (c) the question of notice; (d) the conduct of proceedings in juvenile court; and (e) the significance of informality. Before doing so we wish to note our agreement with the essential philosophy expressed in section 17 - that is, that proceedings should be as informal as the circumstances will permit, consistent with a due regard for the proper administration of justice.

#### Publicity and Private Hearings

240. From time to time suggestions are made that the trials of juveniles should take place in public or that publicity should be given to the names of juvenile offenders and details of their offences. Such proposals are advanced for two quite different reasons. Some persons argue that the fear engendered by public notoriety will serve as a deterrent to the juvenile offender or will make parents more anxious to exert control over their delinquency-prone youngsters. Other persons are concerned about the traditional right to an open and public trial as a guarantee that fair procedures are being followed. We recognize the importances of guarding against abuses in juvenile court proceedings and make a number of suggestions in our Report for dealing with this problem. We affirm, however, the basic philosophy expressed in section 12 of the Act that publicity in regard to the juvenile offender is to be avoided. In support of this position we can do no better than quote the following observations made by Professor Mannheim:

"The fullest publicity for every criminal trial has been one of the basic safeguards of enlightened criminal justice .... On the other hand, it has been recognized ever since the establishment of Juvenile



Courts that this great principle is not equally suitable for the trial of juveniles. In the first place, the danger of political and social bias which publicity of the trial is intended to guard against does not to the same extent exist in cases of juveniles. Secondly, ..... it is obvious that the benefits of publicity, great as they may be, would here be bought at too great a price. If the stigma .... which is the almost inevitable consequence of a public trial is often an undeservedly severe penalty even for the adult offender, in the case of the juvenile delinquent it would mean the most flagrant negation of all those ideals the Juvenile Court stands for. Moreover, the force of imitation being particularly strong in the immature mind, more juveniles are likely to be encouraged than might be deterred by publicizing their own criminal exploits or those of their contemporaries. Juvenile Court Acts everywhere have, therefore, in one way or another restricted the publicity of the trial of juveniles....". (16).

241. Under the Act the ban on identification of the child is addressed to "newspapers and other publications". Doubt has been expressed as to whether this prohibition extends to radio and television. These doubts should be removed and the legislation should indicate clearly that identification of the child through any media whatsoever is prohibited without special leave of the court. We think that the prohibition against identification of a child should extend to any criminal proceedings involving a child where the proceedings arise out of an offence against, or conduct contrary to, decency or morality. This prohibition should apply whether the proceedings are before the juvenile court or an adult court. The young girl ten years of age who is sexually assaulted should not be subjected to the indignity of gross publicity. We would expect that in any such case the mass media would take care not to identify the child. We recommend, however, that they be prohibited from doing so if they be so inclined.

242. Closely related to the question of publicity is the matter of private hearings. One of the purposes of private hearings is, of course, to guard against publicity. It is important to bear in mind, however, that publicity and private hearings raise issues that are by no means identical. Private hearings also serve the independent purpose of ensuring an appropriate atmosphere in the juvenile court. Similarly, the goal of avoiding undesirable publicity may not necessarily require completely private hearings. The question that we have to consider, then, is the extent to which juvenile court hearings should be conducted in private - and, in particular, whether the press should be allowed access to proceedings in the juvenile court.

243. The approach adopted in most American states has been to insist upon a complete exclusion from juvenile court hearings of members of the public other than those having a direct interest in the case, with, at most, a discretion left to the judge to permit the attendance of other persons, including representatives of the press, who have an interest in the work of the court. (17). In recent years this restrictive approach has been relaxed or abandoned in a number of states. On the other hand, in England the position has been that, while the general public are excluded from the juvenile court, bona fide representatives of a newspaper or news agency are entitled to be present. (18). The statute makes it an offence, however, for any newspaper or other news media to "reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child or young person" involved in a proceeding. (19). The law further provides that the judge or the Secretary of State may allow publication of such information "if satisfied that it is in the interests of justice to do so". (20). While the Canadian Act is not explicit, generally speaking it is the American practice that is followed in Canadian juvenile courts. (21).

244. In our view, the English approach is the preferable one. We agree with Wigmore that "no court of justice can habitually afford to conduct its proceedings strictly in private". (22). The traditional function of the press has been to alert the public to improper or undesirable practices. While we have suggested a "public watchdog" role for the juvenile court committee, we doubt that this is a sufficient safeguard. We recommend, therefore, that representatives of the news media should be permitted to attend juvenile court hearings as of right and that, except where expressly prohibited by the judge, they should be permitted to report the evidence adduced at the hearing. We would emphasize that the prohibition against identifying any child before the court, or any child said to have committed an offence, should be retained. This prohibition should be reinforced by an adequate penalty provision in the Act. Moreover, we would also suggest that the number of media representatives should probably be limited to three. Presumably these representatives would be selected by the media themselves, with a final decision left to the judge in the event of disagreement.

245. A further question is whether members of the public should be permitted to attend the proceedings. We think that generally they should not, but that the judge should be authorized to permit any member of the public to attend where he is satisfied that such a person has a bona fide reason to be present. In view of doubts that have been expressed concerning the power of a judge to exclude the general public under existing law, (23), we recommend that the Act be amended to provide specifically that no person shall be present at any hearing of a charge against a child or young person in the juvenile court except: members of the court and necessary court personnel; parties to the case, their counsel and other persons having a direct interest in the proceeding; a maximum of three representatives of the press or other news media; and such other persons having an interest in the work of the court as the court specially

authorizes to be present.

### Counsel

246. There is no requirement by law that juvenile court judges be legally trained and, in fact, many do not have this kind of training. Thus the need for every form of assistance to ensure fair procedure and adequate fact-finding should be apparent. While magistrates who try adult offences are similarly not required to have legal training, most do. In any event the magistrate in adult court is ordinarily assisted by a legally trained crown attorney except in cases of a minor nature. In the juvenile court the usual practice is for a police officer, or in some courts a probation officer, to present the case against the child. If there is need for a crown attorney in a magistrate's court there is even more need for a crown attorney, or similar officer, in the juvenile court. Cases that are heard in the juvenile court are, in our view, as important as those heard in the ordinary courts. A finding of delinquency, with all the powers of disposition incidental thereto, is surely as significant, from the point of view of both the child and society, as is, for example, the trial and disposition of a speeding case against an adult. One argument that has been advanced in favour of retaining the present practice of police officers assuming the role of crown attorney is that police officers, at least when they have been specially selected for youth work, are less imbued with the spirit of winning. If the assumption of fact upon which this argument is based is true - although by this time one would have expected the maxim, "The Crown never wins, the Crown never loses", to have been accepted by all crown attorneys - it merely emphasizes the need for strong juvenile court judges who can impress the philosophy of the Act on all persons involved in its operation.

247. Our system of criminal justice assumes an ability on each side - that of the defence as well as of the Crown - to present its case as fully and as forcefully as possible. We have examined the need for a crown attorney in the juvenile court in the preceding paragraph. Our concern now is with the adequacy of the case presented for the child. The Act is generally silent on this matter. In the one place where it does speak it is in serious error. Section 31 provides: "It is the duty of a probation officer to be present in court to represent the interests of the child when the case is heard....". Experience has shown that one person should not be expected to perform inconsistent functions. The probation officer's primary responsibility is to the court, not to the child. In any event, the probation officer is, as we shall show, now so overburdened with work connected with his major responsibility that it is unlikely that he could properly represent the interests of the child. (24). Nor can we expect the juvenile court judge, as a matter of routine, to represent the child's interests. (25). As a general rule we do not expect judges of superior courts to perform this function. It is basic to our system of law that, in any proceeding where a person's liberty or property may be affected, the person is entitled to counsel. The great majority of children who appear in juvenile court are not represented by counsel. It is not clear whether this is because



parents are unaware of the right of the child to have counsel, or cannot afford to retain counsel, or feel that they do not need or want legal assistance.

248. We think it important to take note of the fact that there has long been a feeling among many persons involved in juvenile court work that lawyers are unnecessary in the juvenile court, and perhaps even undesirable. As one writer has explained, "since at the heart of the juvenile court movement was the vision of the court as a benevolent parent dealing with his erring child, the view was widely held that legal counsel could serve little function .... other than to obstruct and delay the providing of necessary diagnosis and treatment by pettifoggery and technical obstructionism." (26). This attitude has led a number of juvenile courts in the United States actively to discourage the presence of counsel. Parents have sometimes been told that hiring a lawyer is a needless expense and will make no difference in the ultimate outcome of the case. The Governor's Special Study Commission on Juvenile Justice in California concluded that "the adverse views held by some judges regarding the role of an attorney in juvenile court proceedings makes it difficult for counsel to adequately represent their clients." (27). Lawyers, on their part, have often found juvenile court practice confusing and frustrating. Because of the tendency for the traditional adversary techniques of the lawyer to come into apparent conflict with the social objectives of the juvenile court process, suggestions have been made that practice in the juvenile court requires a new concept of proper legal representation. Italian law provides, for example, that the defence of a juvenile can only be undertaken by counsel selected from a panel of lawyers chosen on the basis of their special training and experience in social welfare work. (28). This point will be the subject of further comment below. It is perhaps worth adding here, however, that attitudes towards the lawyer in juvenile court may well be changing. An article reporting on the 1962 revision of family court legislation in New York State contains the following observation: "A significant....recent development has been the repudiation of the thinking that had discouraged the participation of lawyers in the 'social' courts and the mounting demand for legal representation of children in these courts. Of particular interest is the fact that this demand has not originated with the bar but with various social agencies, which have concluded that juvenile and family courts can fulfill their expectations only if a proper balance of legal and social objectives is maintained." (29).

249. To what extent the attitude discussed above exists in Canada is difficult to assess. Certainly it was expressed to the Committee on a number of occasions. It does appear, in any event, that the procedure followed in many juvenile courts often has the effect of persuading parents to waive their right to counsel. The usual practice is for the judge to advise parents of this right when they appear in court. They are informed, however, that if they wish to have counsel it will be necessary to adjourn the hearing. Rather than risk added inconvenience or the loss of another day's work the parents declare to the court that the assistance of counsel is not required. We think that this result is unfortunate and that it can be avoided. We suggest that the notice to the

parent informing him of his child's appearance in court should contain a statement that the child is entitled to be represented by counsel.

250. The problem of the indigent defendant is one that has not been solved in our legal system. The proposition that every person, regardless of his means, has the right to assistance of counsel is not borne out in practice. We share the opinion of those who say that failure to provide counsel to indigent defendants is a violation of basic human rights. In Canada there has been just such a failure. Legal aid schemes - not even adequate in relation to adult offenders - do not ordinarily extend to proceedings in juvenile court. We note that in a number of European countries free legal aid is available in juvenile court. (30). Indeed, in three countries - France, Italy and the Netherlands - a juvenile must be represented by counsel. (31). An impressive recent development is the establishment of a system of "law guardians" in the State of New York pursuant to its new Family Court Act. The Act makes it the duty of the court to advise a juvenile of his right to retain counsel and of his right to have a law guardian provided at public expense if he is unable to obtain a lawyer "by reason of inability to pay or other circumstances." (32). We recommend that the New York system be studied with a view to its introduction into Canada.

251. The "law guardian" system may well be instructive in still another respect. It has often been emphasized in the literature of the juvenile court movement that proper and effective representation in the court requires, at the very least, that a lawyer understand the objectives of the juvenile court process and be familiar with the social techniques employed in dealing with children and young persons. The Family Court Act makes no attempt to define the role of the law guardian. The consensus of commentators seems to be, however, that the use of the term "law guardian" and the methods of appointment outlined in the Act indicate an intention on the part of the legislature to encourage the development of a distinctive approach to the matter of legal representation in the juvenile courts. (33). One legal writer, for example, has made the following suggestions concerning the role of the law guardian:

" The lawyer in the Family Court, no less than in any other court, must stand as the ardent defender of his client's .... legal rights. He should bring to this task the usual tools of the advocate - familiarity with the applicable law, the ability to make a thorough investigation and logical presentation of the pertinent facts and the faculty for forceful and persuasive exposition of his client's position .... The fact that the Family Court is a court, however, should not obscure the fact that it is a court with social objectives and social techniques .... Conscientious counsel will have to exercise intelligent discrimination

in the use of tactics learned in other courts.

Proper implementation of the law guardian concept would give substance to the oft-repeated .... description of the lawyer as an 'officer of the court' .... As an officer of the court a lawyer in the Family Court must assume the duty of interpreting the court and its objectives to both child and parent, of preventing misrepresentation and perjury in the presentation of facts, of disclosing to the court all facts in his possession which bear upon a proper disposition of the matter, subject only to the restrictions imposed by the confidentiality of the lawyer-client relationship, of working in close cooperation with the probation service of the court to reach a proper disposition and, where necessary, to help in getting a child or family to accept such disposition.

In large measure the picture of the court which will be retained by the child will be conditioned by his counsel's attitude toward the court. If counsel condones the 'beat the rap' approach and substitutes deception for honest but firm concern for the protection of his client's rights, he will .... be doing .... a disservice."(34).

252. Because of the importance of the role of counsel in the juvenile court - and also because this is a matter that has been to some extent controversial - we have seen fit to quote extensively from periodical literature. In doing so our purpose has been to call attention to the problem. We make no specific suggestions concerning what is desirable in the way of an adequate concept of proper legal representation in Canadian juvenile courts. It does appear to us, however, that the question merits the study of the legal profession. We recommend, therefore, that any examination of the law guardian system in New York State be conducted with this further aspect of the problem of legal representation in mind.

#### Notice: Duty to Attend Proceedings

253. The present Act requires that "due notice of the hearing of any charge shall be served on the parent or parents or the guardian of the child..". The matter of notice raises several problems. Should there be an obligation to notify the parent when the child is taken into detention? Or when waiver to the adult court is contemplated? Upon whom should the obligation rest? What is "due notice"? We see no reason why there should not be an obligation to inform parents that their child is being detained. Our understanding is that



the workers in detention facilities ordinarily do notify the parent. We suggest that they should be legally required to do so. We go further: we recommend that the parents be notified of every step in the proceedings that may affect the child's liberty. This means that if the court is contemplating waiver of the case to adult court it should notify the parent even though the parent has already disregarded other notices. (35). The duty to give notice should be impressed upon all officials whose powers are given to them by the Act. Thus in the case of a child held in detention, the person responsible for the operation of the detention facilities should be under a duty to notify the parents that their child is detained. In other situations in which notice is relevant the obligation of ensuring that notice is given should rest on the judge.

254. The type of notice that is required has been the source of some uncertainty in juvenile court practice. Juvenile courts in some places, it seems, have been content with giving oral notice, although there are decisions in which the courts have held that the word "served" used in section 10 indicates that written notice is required. (36). The point is an important one because failure to give proper notice deprives a court of jurisdiction to proceed with the hearing of any charge against a child. (37). A further problem is that the Act makes no provision for substituted service, or for dispensing with service in appropriate cases. It not infrequently happens, for example, that a parent lives in a remote part of the province or in another jurisdiction altogether. In the circumstances, another relative or friend may be quite capable of protecting the interests of the child. Nevertheless, section 10 appears to state in unqualified terms that, if the residence of the parent is known, the court may not proceed with a hearing until notice is served on the parent. Obviously there will sometimes be difficulties in confirming that the notice has been received. In some cases, we are told, children have been held in detention for a period of weeks pending a hearing solely because of delays in effecting service. We agree, therefore, with those who have recommended that the procedure for giving notice to parents or guardians should be clarified. We think that the Act should make it clear that when the notice relates to an actual hearing in the juvenile court, whether for the purpose of dealing with a charge or for considering waiver of jurisdiction, the notice should be in writing. There have been suggestions that standard forms should be provided in the Act as a guide to judges. We think this would be desirable, and that a standard form of notice should be included among such forms. We suggest also that a judge should be authorized under the Act to permit substituted service of notice where necessary, or to order in certain specified situations that notice be served on some other suitable adult relative or adviser who would be entitled to appear at the hearing on the child's behalf.

255. In the present state of the law there is no duty on parents to be present at proceedings involving their child. As the Ingleby Committee observed: "It is important that parents should appreciate their responsibilities towards their children and one way to bring that home is to require their

attendance at court when their child's case is being heard." (38). We have been told of juvenile court judges whose strong feelings on this point have led them to subpoena parents to ensure their presence. Despite the worthy motive that has inspired such action, it seems to us that this is a misuse of the court's process. We do think, however, that parents should ordinarily be required to attend a juvenile court hearing. Moreover, we agree with the observation of one noted author that "special efforts should be made to facilitate the attendance of the father of the juvenile who at present too often remains an unknown figure....". (39).

256. The only objections that can be raised against such a requirement are that it violates the parent's civil liberties and that it may cause hardship by requiring the parent to be absent from work. The civil liberties objections are not overriding considerations in this context. It may be true that the alleged delinquency in the particular case is not related to any parental fault and that to require attendance in the absence of fault, unless one is otherwise a compellable witness, is a dangerous practice. Nevertheless, a parent owes a duty of care to his child. This duty of care in common conscience would require that parents attend court. On balance, we think that the greater good will be served by buttressing the requirements of conscience with the sanctions of law. To avoid the harshness that could result if both parents were invariably required to attend, the court should be given the power to dispense with the attendance of one or both parents in special circumstances.

#### Conduct of Proceedings

257. The manner in which proceedings against children and young persons should be conducted has long been a problem for juvenile courts both in this country and elsewhere. In England the juvenile court judge has the assistance of The Summary Jurisdiction (Children and Young Persons) Rules, 1933, which set out in some detail the procedure that is to be followed in juvenile court hearings. (40). No similar form of guidance is given to judges in Canada. The Act itself leaves a number of questions unanswered. While Canadian practice has been clarified to some extent by the decisions of appellate courts, it was evident to the Committee that uncertainty in regard to matters of procedure has by no means been dispelled.

258. As we have noted, the Act provides that prosecutions and trials in the juvenile court "shall . . . . be governed by the provisions of the Criminal Code relating to summary convictions in so far as such provisions are applicable. . . .". Proceedings are thus commenced by laying an information. In the past there has existed some uncertainty among juvenile court judges concerning the form and contents of an information employed in juvenile court proceedings. Lack of uniformity in practice was the result. We have indicated previously our support for the proposal that a standard set of forms be adopted for use in connection with the Act. We recommend that a standard form of information be included among the forms provided.

259. A problem that was brought to the Committee's attention by a number of judges concerns the matter of arraignment and plea. A juvenile court judge is required, so far as practicable, to follow the procedure set out in section 708 of the Criminal Code. Section 708 directs: "Where the defendant appears the substance of the information shall be stated to him, and he shall be asked . . . whether he pleads guilty or not guilty . . .". It is incumbent upon any court to ensure that an accused has a full understanding of the offence with which he is charged before being asked to plead. The special obligation of the juvenile court judge is indicated by the English rules, which state that the court "shall explain to the child or young person the substance of the charge in simple language suitable to his age and understanding". (41). There is reason to believe that not all juvenile court judges have been sufficiently conscious of this obligation. More difficult questions arise, however, in connection with the matter of a plea. A plea is a technical concept. (42). For one thing, it involves not simply an admission that a particular act has been committed, but an admission of every essential element of the offence. Moreover, in proceedings involving adults a plea of guilty is sufficient of itself to sustain a conviction without the introduction of evidence, although a court may permit a plea of guilty to be withdrawn at any time before sentence if it appears that the plea has been entered in error. In the case of a juvenile, particularly a young child, it will not always be appropriate to take a formal plea. (43). Doubt has been expressed, for example, as to whether a judge should be permitted to make a finding upon the admission of a juvenile alone. Moreover, in order that younger children will understand what is being asked of them, the court is often forced to use language other than that specified in section 708. Practice in this regard is not uniform, but usually the court will ask "Do you admit the charge?" or "Did you do this?". An affirmative response to such a question, while being an admission of specific conduct, may not necessarily represent an admission of all the elements of the offence charged. Perhaps even more important, the form of question tends to constitute an invitation to the child to make a statement concerning the occurrence itself. Thus the child is sometimes being asked, in effect, to incriminate himself. (44).

260. The question of self-incrimination takes on added importance by reason of the controversy that has surrounded the issue in discussions of juvenile court procedures. An accused may not, of course, be required to give evidence against himself. Many persons associated with the juvenile court movement, however, take the view that a child should not be informed of his privilege not to testify because to do so would tend to detract from the effectiveness of the hearing as part of the treatment process. This attitude is well illustrated by the following comments of a noted American juvenile court judge: "To help the child change his attitude, a confession is a primary prerequisite. Without it the court is aiding the child to build his future on a foundation of falsehood and deceit, instead of on the rock of truth and honesty. . . . Consequently anything . . . that may tend to discourage a child from making a clean breast of it . . . must retard, and possibly defeat, the court's efforts to correct the child." (45).



261. In many Canadian juvenile courts the ambiguities in the present procedure for taking a plea tends to disguise the fact that a self-incrimination issue is involved. We recommend that the law be clarified in regard to both the plea procedure and the privilege against self-incrimination. In the following Chapter we suggest changes in the disposition provisions of the Act designed to provide that a finding that the facts alleged against a juvenile have been proved will not lead automatically to a formal adjudication that he is a child or young offender. (46). We think that these changes, which are advanced with several objectives in mind, should introduce more flexibility into this aspect of juvenile court procedure. In regard to the matter of the plea itself, we make no specific recommendation other than to note certain suggestions made by Professor Mannheim as perhaps representing a workable approach. He observes: "As provided in the English . . . Rules . . . 'the Court shall explain to the child or young person the substance of the charge in simple language suitable to his age and understanding', and then ask him 'whether he admits the charge', 'charge' meaning, however, only the facts, not their legal implications. This . . . should, at the same time, be an encouragement to the juvenile 'to tell his story', though it should be made clear to him that he is not obliged to say anything. The juvenile's admission should serve not as the legal basis for the subsequent proceedings but only as a guide as to how the further course of the trial might be best arranged. The hearing on further evidence should not be regarded as unnecessary merely because of an 'admission of the charge' . . . ". (47).

262. Still other procedural problems arise by reason of the special nature of a hearing in the juvenile court. One problem, for example, concerns the traditional right of confrontation. It has been considered a basic principle of Anglo-American criminal procedure that the entire trial should take place in the presence of the accused. Should the juvenile court have the power, as some have suggested, to exclude a child from a hearing when evidence is being received that, in the view of the court, is not fit for the child to hear or may damage the child's confidence in his parents? (48). And again, there are difficulties connected with a system of cross-examination in proceedings where children are involved. This point is dealt with specifically in the English rules which state: "If in any case where the child or young person, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the child or young person and may for this purpose question the child or young person in order to bring out or clear up any point arising out of any such assertions." (49). To cite yet another example, the goal of informality in the juvenile court has led some courts to question witnesses without administering an oath. Our purpose in raising these various questions is to indicate the need, as we see it, to provide more adequate guidance to juvenile court judges on matters of procedure than they now receive. We recommend that appropriate steps be taken to this end.

263. Another problem that has caused some difficulty in juvenile court practice concerns the manner in which the age of a juvenile before the court is established. In order to acquire jurisdiction, the judge must, in clear terms, make a finding that a young person is "apparently or actually" under the juvenile age. From time to time a finding of delinquency is set aside because the evidence accepted in proof of age was insufficient. (50). It may be useful to record here the two principal suggestions for amendment that have been advanced. One proposal is that the Act should be amended to permit a judge to determine, in his discretion, the age of the child by his own observation alone, unless it is shown by evidence that the child is in fact over that age. Another proposal is that the production of an official birth certificate purporting to be in the name of the juvenile should be received as *prima facie* evidence of the age of the child or young person before the court, thus dispensing with the need for evidence to show that the juvenile is the one mentioned in the birth certificate. We content ourselves here with recommending that any revision of the Act make adequate provision for a clear and simple method of proving the age of a child or young person before the court.

264. One other matter relating to the conduct of proceedings in the juvenile court might be mentioned. We have indicated the importance to the court of having the assistance of crown attorneys and defence counsel. There is one other form of assistance available in the superior courts that is not available in the juvenile court. It is trial by jury. Because the juvenile court was conceived as exercising the *parens patriae* jurisdiction of the chancery court the use of a jury was not considered. Most jurisdictions that have made a searching examination of their juvenile court legislation have seen no need for change in this respect. As we have noted earlier, the English legislation provides for trial by jury for young persons fourteen years of age and older charged with an indictable offence and certain summary offences. However, to exercise this right the young person must submit to the adult court. We have stated that it is our feeling that a young person should be entitled to the benefit of a jury trial and that he should not have to submit to the full rigours of the criminal law to obtain it. Jury trials would certainly be inconvenient in juvenile courts and for that reason we have recommended certain procedures in the "waiver" portion of this Report whereby a young person would be entitled to a jury trial in adult court while remaining subject to the disposition provisions of the juvenile court law. (51).

#### Informality and Informal Treatment

265. Informality of procedure in the juvenile court is undoubtedly desirable. However, it should not be equated with the absence of the traditional kinds of protection that the rules of criminal procedure are designed to provide. (52). A court is not justified, for example, in basing its judgment on uncorroborated admissions, hearsay evidence or contested assertions in social investigation reports. We have been told of courts that will sometimes arrange for a psychiatric examination of a child charged with an act of delinquency, or

direct that a probation officer conduct an investigation into the child's background, and all of this prior to a determination that the child is, in fact, delinquent. Such practices have no sanction in law. They are, in fact, a clear violation of a child's fundamental civil rights. Until the child is found to have committed the act complained of, the state should have no right to infringe the child's interests in preserving his privacy except in the most urgent cases. (53). A child considered so mentally ill or feeble-minded as to be unable to instruct counsel must be examined by scientific experts. Again, a child held in detention will have to be given a physical examination to ensure that he is not a carrier of contagious diseases. A judge who is contemplating waiver of a case to the adult court is justified in ordering a social investigation of the child, provided that he is satisfied at a hearing that there is a reasonably strong case against the child. However, these are the only situations we can visualize where there is a sound reason to invade the child's right of privacy.

266. The matter of privacy is very much an issue in procedures adopted by some juvenile courts for the informal adjustment of cases. It is not uncommon for juvenile courts to arrange for the preliminary screening of cases through an intake procedure. (54). This intake function is ordinarily the responsibility of a probation officer, acting in accordance with general directions received from the juvenile court judge. Upon referral of a case to the court, the intake officer makes inquiries concerning the nature of the offence and previous official experience with the child or family as a basis for deciding whether court action seems to be required and, if so, whether pursuant to delinquency legislation or legislation relating to children in need of care or protection. In the process of reviewing these cases, many courts undertake to provide what is called a "non-judicial service" of informal adjustment. (55). The object of the service is to make measures of "preventive treatment" available in appropriate cases without the necessity of a formal court hearing. Practice varies from court to court in regard to the action that may be taken. Some courts do no more than attempt to arrange a counselling session, on a completely voluntary basis, with the child and his parents. An advantage of such consultation, for example, is that an experienced probation officer can sometimes identify situations where referral to a social agency would be beneficial. Other courts undertake, with the parents' consent, to provide unofficial supervision of the child by a probation officer. In past years it was not unusual for juvenile courts, more particularly in the United States, to impose measures of compulsory supervision through non-judicial procedures, the threat - actual or implied - of formal court proceedings being used to enlist the co-operation of the child and his parents. While most authorities now agree that informal adjustment is justified only if it is accepted voluntarily by the family and child concerned, it seems apparent that some juvenile courts still bring heavy pressures to bear in an effort to secure acceptance of the service offered.

267. As the publication *Standards for Specialized Courts Dealing with Children* points out, the "handling of cases in an unofficial manner, . . . including the use of 'unofficial' probation is a practice about which considerable



difference of opinion exists, even among judges and other court personnel." (56). This difference of opinion was evident to our Committee. It is clear that serious abuses have occurred through the use of non-judicial procedures. In some American courts children have been kept under supervision for periods up to three years without any judicial determination that an act of delinquency was committed. Courts have used the threat of possible court proceedings to insist upon making a full social investigation prior to a hearing, sometimes even in the face of a denial of the charge by the child. There is little information available concerning non-judicial practices of court personnel in Canada. We have been told of abuses. Such procedures lend themselves to abuse. Whether or not the co-operation of parents is truly voluntary, for example, may often require a very subtle determination indeed, having regard to the suggestion of coercion that may seem to be implied in any communication received from a court official.

268. The arguments in favour of permitting some kind of informal adjustment of cases are several. Some offences brought to the attention of the court are too trivial to warrant any action other than a warning not to engage in further misconduct. There are situations, it is said, that merely require advice or direction rather than the disciplinary intervention of the court, and others in which favourable home conditions and responsible parents augur well for favourable results without the formality of a court hearing and adjudication of delinquency. Still another argument that has been advanced is stated in one submission as follows: "When all complaints - even very minor ones - must be dealt with by formal written complaint and formal court hearing, there is a tendency for a large proportion of such minor complaints to be handled very summarily . . . by the authorities at the very point where preventive treatment is possible and can be most effective." (57). Added to these arguments is the suggestion that informal adjustment serves to conserve the time of the court, thus enabling the court to give more attention to serious cases than would be possible if it were required to deal with a large number of very minor offences.

269. We think that, on balance, the advantage lies with permitting informal adjustment to a limited degree, but subject to precise legal controls. As the Probation Officers' Association of Ontario has observed, "a substantial proportion of all juvenile complaints - at least in certain areas - are now dealt with informally in this manner, but completely without statutory authorization or direction." (58). It is evident, therefore, that such non-judicial practices should not be ignored. It seems to us to be the wise plan to regularize non-judicial practices - stipulating, in the process, that they must meet certain defined standards of performance - rather than to attempt to terminate informal adjustment by express legislative prohibition. We note that this is the solution that has been adopted in the new Family Court Act of New York which, as one author states, "is unique in the fact that not only does it make provision in a general way for preliminary procedure or intake but it describes in considerable detail the procedural requirements that must be

observed." (59). Specifically, the New York statute provides that rules of court may authorize the probation service to undertake preliminary procedures, subject to the safeguard that "the probation service may not prevent any person who wishes to file a petition . . . from having access to the court for that purpose." (60). The statute also indicates that the probation service may not compel any person to appear at a conference, produce any papers or visit any place. It seems to us that an approach along these lines represents an acceptable solution to the problems presented by informal adjustment. We suggest that the law should provide that informal adjustment is permitted only where the police investigation indicates clearly that an offence has been committed, where the substance of the complaint is admitted by the child, and where the express consent of the parents is obtained. We also recommend that efforts to effect informal adjustment should be limited by law to a period of not more than two months.

### Rules of Court

270. We have made reference earlier in our Report to the matter of rules of court. (61). Specifically, we suggested: that a judge should be authorized to make special arrangements, through rules of court, for dealing with cases of a routine nature; and that procedures for dealing with very minor infractions of the law outside of the court should be subject to judicial superintendence and control in the same manner.

271. There are a number of areas of activity that require control and direction from the juvenile court judge. It may be necessary to issue policy directives concerning the intake procedures that are to be followed in the court and the criteria that are to govern case selection or screening through intake. Similarly, policies in regard to detention, informal adjustment, court procedure, after-care supervision and the like may require definition by the judge. In a few courts the judge is also the administrator of extensive clinical or other social services. (62). It may often be desirable to set out the various policy decisions of the court in writing in order to ensure continuity in court practices. In this way decisions on procedure and policy are available to court personnel, new appointees, and also other persons who work with the court, such as police officers and representatives of child welfare agencies. For this reason many juvenile court statutes make provision for the issuance of rules of court. The Juvenile Court Act of the District of Columbia, for example, provides: "The court shall have the power . . . to frame and publish rules and regulate the procedure for cases arising within the provisions . . . (relating to juvenile delinquency) . . . and for the conduct of its officers and employees. . . ." (63).

272. We recommend, therefore, that the Act be amended to include a provision authorizing the issuance of rules of court in respect of matters that fall within the ambit of federal jurisdiction - that is, matters relating essentially to the procedures that may be followed in dealing with a juvenile

apprehended or charged in connection with an offence. We would further suggest that any rules so issued should be subject to the approval of the Attorney General or other appropriate provincial officer. This should help to guard against undesirable practices by juvenile courts, and also to encourage uniformity of practice throughout the province. Rules of court relating to other matters of concern to the juvenile court could be authorized only pursuant to provincial legislation.

### Appeals

273. Representations have been made to us that the present appeal procedure established by the Act is unduly restrictive. We agree. Section 37 declares:

" 37 (1) A Supreme Court judge may, in his discretion, on special grounds, grant special leave to appeal from any decision of the Juvenile Court or a magistrate; in any case where such leave is granted .... the provisions of the Criminal Code relating to appeals from conviction on indictment mutatis mutandis apply to such appeal, save that the appeal shall be to a Supreme Court judge instead of to the Court of Appeal, with a further right of appeal to the Court of Appeal by special leave of that Court.

(2) No leave to appeal shall be granted .... unless the judge or court granting such leave considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that such leave be granted."

274. A number of authorities have argued that appeals from the juvenile court should be as few as possible. (64). The reasoning is that, in the case of juvenile offenders, any measures of a corrective nature ordered by the court should be commenced almost immediately because, as experts on child psychology have emphasized, such measures will tend to lose their effect if there is delay in carrying them out. In addition, it is thought to be generally undesirable for court proceedings involving children to be unduly protracted. The present appeal provisions of the Act reflect an intention to keep appeals to a minimum. Nevertheless, the restrictive character of the existing provisions has caused much concern, having regard in particular, as one submission notes, to "the vast powers held by the presiding officers of such courts and the fact that these courts are closed to the public." (65). We note also that section 37 has been interpreted to mean that if the judge of the Supreme Court refuses



leave to appeal from a decision of the juvenile court there is no jurisdiction in the Court of Appeal even to consider an application for leave to appeal from the finding of the judge of the Supreme Court, whereas if the Supreme Court judge grants leave to appeal and then dismisses the appeal on its merits the Court of Appeal does have jurisdiction to entertain an application for leave to appeal. (66). This result we regard as unfortunate. It constitutes, in our view, a further reason for altering the appeal provisions.

275. We recommend that both the Crown and the accused be given a direct right of appeal to the Court of Appeal on any ground of appeal that involves a question of law alone. There should also be a right to appeal with leave of the Court of Appeal on any other ground that appears to that Court to be sufficient. We would hope that the Court of Appeal would arrange to hear appeals from juvenile court decisions as quickly as possible. Adoption of the scheme we propose would permit important questions of law to be decided by the one tribunal whose pronouncements apply throughout the province. It would help to ensure that the juvenile court performs its proper role; the administration of a system of individualized justice according to law.

#### Footnotes

1. Bloch and Flynn, The Juvenile Offender in America Today (1956), p.328.
2. Province of Nova Scotia.
3. International Review of Criminal Policy (No.5, 1954), p.24. For a useful discussion of the composition of the juvenile court, including the approach that has been adopted in some Continental countries, see Grunhut, "The Juvenile Court: Its Competence and Constitution," in Lawless Youth: A Challenge to the New Europe (Howard League for Penal Reform, Fry ed., 1947), p.22, at pp.44-47. See also Nunberg, "Problems in the Structure of the Juvenile Court," (1958) 49 Journal of Criminal Law, Criminology and Police Science 500, at pp. 503-505 and 509-511. While a review of the references cited will suggest entirely different approaches to the problem of securing a suitable combination of background and qualities on the juvenile court bench, we doubt that in the Canadian context any such substantial change in the way in which the juvenile court is constituted would present a practical alternative to the existing system. Accordingly, we have placed the principal emphasis upon proposals designed to improve the present system.
4. So far as we are aware there is no actual statistical data on this point. However, it is well known that most children

admit the charges against them. In Scotland, it has been estimated "that in almost 95 per cent of the cases there is no dispute as to the facts alleged...". Kilbrandon Committee, para. 73, p.37. One American commentator reports: "In one court a count of three thousand consecutive cases revealed that only five children had wholly denied involvement in the named offences." Alexander, "Constitutional Rights in Juvenile Court," in Justice for the Child (Rosenheim ed., 1962), p.82, at p.87. Some question has been raised, however, as to whether children and young persons charged actually agree with the allegations against them in such a large percentage of cases. See Handler, "The Juvenile Court and the Adversary System: Problems of Function and Form," (1965) Wisconsin Law Review 7, at pp. 26-28.

5. From time to time appellate courts have called attention to the dangers inherent in leaving the conduct of juvenile court proceedings to juvenile court judges untrained in the law. See for example, Rex v. H., (1931) 2 W.W.R. 917; Rex v. Tillitson, (1947) 2 W.W.R. 232, 89 C.C.C. 389; Regina v. Hankins, (1955) 14 W.W.R. (N.S.) 478, 111 C.C.C. 387. American experience would seem to suggest, however, that the appointment of persons with a legal background to the juvenile court bench is not of itself a complete answer to the problem of ensuring procedural regularity in juvenile court proceedings. Moreover, the Committee has been impressed by the obvious competence of some of the juvenile court judges in Canada who are not lawyers. For these reasons, we doubt that formal legal training need be considered a prerequisite to an appointment as juvenile court judge. We think that the path of reform lies in the direction of improved methods of selecting and training juvenile court judges generally, and in providing adequate assistance to the individual juvenile court judge in the discharge of his duties.
6. See supra paras. 168-170.
7. See, for example, Burns, "A Training Course for Juvenile Court Judges," (1962) 8 Crime and Delinquency 182.
8. Juvenile Delinquents Act, ss. 7 and 28 (3).
9. Report of the Standing Committee on Probation, Association of Juvenile and Family Court Judges of Ontario (Sept., 1962, as revised March, 1962), p.13.
10. Writing in 1941, the draftsman of the original Juvenile Delinquents

Act observed: "It was thought by those who originally framed the Act that a Juvenile Court Committee would prove extremely useful, if not indeed actually necessary to the proper functioning of the court. Nor was this opinion based solely on theory. At that time such committees were said to be in successful operation in many places in the United States, and a very active one, established in 1906, was actually functioning most successfully in connection with the Ottawa Children's Court. This latter committee continued to do useful work for several years after the passing of the Act, but was later discontinued. Unfortunately, the idea of a Juvenile Court committee did not eventually prove popular and few of them are now existing in Canada. This result appears to have been chiefly due to a tendency to friction between the judge and the committee." Scott, The Juvenile Court in Law (3rd ed., 1941), p. 26.

11. See supra para. 228.
12. See Scott, op. cit. supra note 10, at p. 25; Report of the Governor's Special Study Commission on Juvenile Justice, (California, Part 11, 1960), p.52.
13. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association - Ontario (1962), p.5.
14. Id., at pp. 5-6.
15. Report of the Governor's Special Study Commission on Juvenile Justice (California, Part 1, 1960), p.50.
16. Mannheim, "The Procedure of the Juvenile Court," in Lawless Youth, op. cit. supra note 3, p.51, at pp. 66-67.
17. See generally Geis, "Publicity and Juvenile Court Proceedings," (1958) 30 Rocky Mountain Law Review 1.
18. Children and Young Persons Act, 1933, 23 Geo. 5, c.12, s. 47. A comment on the English law appears in Cavenagh, The Child and The Court (1959), pp. 62-64.
19. Children and Young Persons Act, 1933, s. 49.
20. Children and Young Persons Act, 1933, s. 49.
21. The provisions of the Act were considered in Rex v. H. and H., (1947) 1 W.W.R. 49, at pp. 54-56, 88 C.C.C. 8, at pp.13-16.



22. 6 Wigmore, Evidence (3rd ed., 1940), p. 340.
23. See Regina v. Gerald X, (1958) 25 W.W.R. (N.S.) 97, per Adamson, C.J.M., at pp. 112-113, 23 C.R. 100, at p. 112.
24. See infra paras. 302 - 304.
25. In a study conducted into the operation of the Children's Courts in New York City, the need for more adequate representation of children than was being provided by the judge or by probation officers appointed by the court to act was pointed out in very strong terms. See Schinitzky, "The Role of the Lawyer in Children's Court," (1962) 17 The Record of the Association of the Bar of the City of New York 10, at pp. 17-23. The establishment of a system of "law guardians" in New York, was, in part, a response to this study. One commentator has given the following reasons for insisting upon the essential elements of an adversary procedure in juvenile court hearings. "The nonadversary, solicitous procedure seriously underestimates the extraordinary task placed upon the fact-finder adjudicator .... What is needed .... for the accurate determination of delinquent behavior is a clear separation of fact-finding roles. A clear separation is needed because as a realistic matter the drive of the single fact-finder would be to try to label the case, to try to fit it into a familiar pattern in an effort to order the mass of facts around a tentative theory ....'What starts as a preliminary diagnosis designed to direct inquiry tends, quickly and imperceptibly, to become a fixed conclusion, as all that confirms the diagnosis makes a strong imprint on the mind, while all that runs counter to it is received with diverted attention'. The existence and force of this drive tends to cast the facts as the single fact-finder would have it, which could differ from what the facts are. .... It makes little difference whether effective decision-making has shifted from the judge to the probation staff or the police. The judge, of course, has less opportunity to perform the required fact-finding function, but the inherent vice of the nonadversary system does not lie in the lack of opportunity. It lies in the fact that psychologically the single person attempting three roles will be less inclined to take the opportunity ....". Handler, supra note 4, at pp. 29-31.
26. Isaacs, "The Role of the Lawyer in Representing Minors in the New Family Court," (1963) 12 Buffalo Law Review 501, at p. 503.

27. Report of the Governor's Special Study Commission on Juvenile Justice, Part 11, at p. 13.
28. International Review of Criminal Policy (No. 5, 1954), p. 26.
29. Isaacs, supra note 26, at pp. 504-505.
30. International Review of Criminal Policy (No. 5, 1954), p. 26.
31. Ibid.
32. New York Family Court Act, N.Y. Sess. Laws 1962, c. 686 as amended, art. 249.
33. See, for example, Isaacs, supra note 26; Dembitz, "Ferment and Experiment in New York: Juvenile Cases in the New York Family Court," (1963) 48 Cornell Law Quarterly 499; Donahue, "New York Family Court Act: Article 7 - Its Philosophy and Aim," (1964) 15 Syracuse Law Review 679, at p. 685. See also Handler, supra note 4, at pp. 36-39.
34. Isaacs, supra note 26, at pp. 506-507.
35. The Act requires only that "due notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child ....". Juvenile Delinquents Act, s. 10(1). There is no formal requirement that notice be served on parents in connection with a hearing on an application for waiver of jurisdiction. See Regina v. Pacquin and De Tonnacourt, (1955) 15 W.W.R. (N.S.) 224, at p. 227.
36. See, for example, Re Wasson, (1940) 14 M.P.R. 405, at p. 408, 73 C.C.C. 227, at p. 229 (N.S. Sup. Ct. in banco).
37. Smith v. The Queen (1959) S.C.R. 638.
38. Ingleby Committee, para 200, p. 65.
39. Mannheim, supra note 16, at p. 71.
40. The Summary Jurisdiction (Children and Young Persons) Rules, 1933, are set out in Clarke Hall and Morrison, Law Relating to Children and Young Persons (4th ed., 1951), p. 208 et. seq.
41. The Summary Jurisdiction (Children and Young Persons) Rules, 1933, Rule 6.

42. See generally 10 Halsbury, Laws of England (3rd ed., 1955), pp. 407-408; Orfield, Criminal Procedure from Arrest to Appeal (1947), c. VI.
43. Rex v. H. and H., (1947) 1 W.W.R. 49, at pp. 57-58, 88 C.C.C.8, at pp. 17-18.
44. This, for example, appears to have been the construction that members of the Supreme Court of Canada placed on the juvenile court judge's question to the accused child in Smith v. The Queen, (1959) S.C.R. 638, at pp. 649 and 650-651.
45. Alexander, supra note 4, at p. 88.
46. See infra paras. 286-292.
47. Mannheim, supra note 16, at pp. 71-72.
48. See U.S. Dept. of Health, Education and Welfare, Children's Bureau, Standards for Specialized Courts Dealing with Children (1954), pp. 57-58; Mannheim, supra note 16, at pp. 73-74. Whether or not there is a right of confrontation in juvenile court proceedings is a question that has been much debated in the United States. See generally Antieau, "Constitutional Rights in Juvenile Courts," (1961) 46 Cornell Law Quarterly 387, at pp. 401-403. The issue also arises in connection with the reception by the court of presentence reports and other information relevant to disposition. This latter question is discussed in Chapter IX.
49. The Summary Jurisdiction (Children and Young Persons) Rules, 1933, Rule 9.
50. See, for example, Rex v. Crossley, (1950) 2 W.W.R. 768, 98 C.C.C. 160; Regina v. Harford, (1964) 48 W.W.R. (N.S.) 445, 43 C.R. 415. The problem of adequate proof of age also arises in cases where a child is the victim of the offence and it is necessary to establish the age of the child in proceedings against an adult. See Rex v. Ivall, (1949) 4 D.L.R. 144, 94 CCC. 388 (Ont. C.A.); Rex v. Denton, (1950) 2 W.W.R. 315, 98 C.C.C. 391.
51. See supra paras. 168 - 171.
52. This, in fact, is the view that the courts have taken in response to arguments based upon the provision in section 17 of the Act to the effect that "No adjudication or other



action of a juvenile court with respect to a child shall be quashed or set aside because of any informality or irregularity where it appears that the disposition of the case was in the best interests of the child." See Smith v. The Queen, (1959) S.C.R. 638, at p. 650; Rex v. Crossley, (1950) 2 W.W.R. 768, at p. 769, 98 C.C.C. 160, at p. 161; Re Wasson, (1940) 14 M.P.R. 405, at p. 409, 73 C.C.C. 227, at p. 230 (N.S. Sup. Ct. in banco).

53. The importance of guarding a child and his family against unnecessary invasions of privacy through the juvenile court process has gained increasing recognition in the United States, where the question has received a great deal of attention. See, for example, Tappan, "Treatment Without Trial," (1946) 24 Social Forces 306; Sheridan, "Double Jeopardy and Waiver in Juvenile Delinquency Proceedings," (1959) 23 Federal Probation 43, at p. 46 and nn. 22 and 23. On the matter of pre-trial enquiries, see also Mannheim, supra note 16, at pp. 61-62.
54. See generally, Standards for Specialized Courts Dealing with Children, op. cit. supra note 48, pp. 36-45; National Probation and Parole Association, Advisory Council of Judges, Guides for Juvenile Court Judges (1957), c. VI; Wallace and Brennan, "Intake and the Family Court," (1963) 12 Buffalo Law Review 442. A description that has been given of the intake procedure in the Vancouver Juvenile Court is set out as Appendix "E" to this Report.
55. Wallace and Brennan, supra note 54, at p. 446.
56. Standards for Specialized Courts Dealing with Children, op. cit. supra note 48, at p. 43. Some of the objections to these non-judicial procedures are discussed in Tappan, "Unofficial Delinquency," (1950) 29 Nebraska Law Review 547.
57. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association - Ontario (1962), p. 6.
58. *Ibid.*
59. Wallace and Brennan, supra note 54, at pp. 446-447.
60. New York Family Court Act, art. 333(b).
61. See supra paras. 154 and 156.
62. For a discussion of this aspect of the juvenile court judge's

function, see Keve, "Administration of Juvenile Court Services," in Justice for the Child, op. cit. supra note 4, p. 172.

63. District of Columbia Code, 1951, art. 11-930.
64. See, for example, Mannheim, supra note 16, at p. 77; Pound, "The Juvenile Court in the Service State," Current Approaches to Delinquency (National Probation Association Yearbook, 1949), p. 21, at p. 38. There have also been suggestions for special procedures for appeals in juvenile cases. One such suggestion, for example, is for the establishment of a Court of Juvenile Appeals, consisting of a Board of Juvenile Court Judges sitting en banc. See Nunberg, supra note 3, at p. 511 and n. 64. In the context of the Canadian juvenile court system, however, we think it desirable that appeal procedures should parallel those that are established for review in criminal cases.
65. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association - Ontario (1962), p. 7.
66. Regina v. Moroz, (1964) 45 W.W.R. (N.S.) 385, 2 C.C.C. 138 (Man. C.A.).

## CHAPTER IX

### TREATMENT SUBSEQUENT TO JUDICIAL DETERMINATION OF DELINQUENCY

#### Introduction

276. In beginning this Chapter we think it important to emphasize again the implications of the juvenile court concept. What is a juvenile court? Of the many answers that have been given to this question we need quote but one. A leading criminologist in England has defined a juvenile court in the following manner:

" Leaving aside all particular forms of organization and modes of procedure, we may characterize a Juvenile Court by three essentials: First, it is a court set up to deal with juveniles within certain age limits, deliberately excluded from the legal machinery provided for adults. Secondly, it has at its disposal a flexible system of educational and preventive measures intended primarily to be applied with a view to the juvenile's rehabilitation. And thirdly, provisions have been made to render accessible to the Court expert advice and experience in order to enable the judge to give his decision with a view to the juvenile's personal needs and social background." (1).

277. We are concerned in this Chapter with the following matters: (a) the powers of disposition to be given to the juvenile court; and (b) the resources and techniques that are available to the juvenile court in making a proper disposition of the case. It will be evident from the definition of a juvenile court set out above that, in considering the question of resources, we are dealing with a matter essential to the very implementation of the juvenile court idea itself. Our general conclusions cannot be stated in more appropriate language than that of a judge of the New York State Family Court who has observed:

" The disposition of children in the Juvenile Term has been described as involving not only self-deception by the judge, but also .... community self-deception, an attitude that tolerates the lack of appropriate services and facilities .... The lack of appropriate services and facilities for delinquent children....has contributed more than any other single factor to negating the purpose of the court. The value of diagnostic



studies and recommendations is too often reduced to a paper recommendation. In shopping for placement, probation officers are forced to lower their sights from what they know a child needs to what they can secure. Their sense of professional responsibility is steadily eroded. The judge, in turn, becomes the ceremonial official who in many cases approves a disposition which he knows is only a dead end for the child. " (2)

### Diagnosis and Treatment Plan

278. Under the Act the judge's real difficulty arises when he finds the child before him to be delinquent. The judge's problem then is to determine which of the possible choices of disposition will best meet the circumstances of the case before him. In most cases the facts disclosed in the proceedings to this stage will be an insufficient basis upon which to make a sound decision concerning the way to deal with the child. The court can obtain the necessary additional knowledge of the child by various means. It can order a pre-sentence report or a psychological or psychiatric investigation and, if necessary, have the child held in detention pending investigation.

### Pre-sentence Reports

279. The preparation of adequate pre-sentence reports takes time. It is clearly not the proper function of the judge to prepare them. The only person mentioned in the Act as having anything like this responsibility is the probation officer. In another section of our Report we examine the role and structure of probation services. At this point we merely note that probation staffs generally are carrying caseloads so high that often the pre-sentence reports presented to the court are no more than cursory in nature. In some areas no probation officer is available to assist the court. In such circumstances it is difficult to make a fair appraisal of the suggestion, made by many, that a pre-sentence report should be mandatory in every case. Nevertheless we recommend that, at the very least, no judge should be authorized to commit a child to an institution or to authorize his removal from the home in any way without first having considered a pre-sentence report in respect of that child. (3).

### Psychological and Psychiatric Investigation

280. In some cases the investigations incidental to the pre-sentence report will disclose factors indicating the need for an intensive appraisal of the child's intelligence and personality. Occasionally the act committed by the child - arson or sexual assault, for example - may show the same need even without a pre-sentence report. Although the need for this intensive psychological and psychiatric appraisal of the child may be evident, (4), the problem is that in Canada we lack the personnel and facilities to provide the service. Very few

courts have readily available the necessary psychologists and psychiatrists. Only a few have diagnostic clinics attached to them. Others must rely on services provided by agencies such as mental health clinics. Unfortunately these clinics are already overburdened. The waiting lists are extremely long, although it should be noted that the clinics generally attempt to give priority to juvenile court cases. The problem here is not solely one of financing. Canada just does not have enough psychologists and psychiatrists, nor is there any indication that it will have a sufficient number in the reasonably near future. Most psychiatrists are in private practice and, accordingly, are not usually available to serve the needs of the juvenile court. We have no solution to the problem, which is urgent even in the metropolitan areas of our country. In sparsely populated regions the problem may well be insoluble, except for temporary or occasional assistance of psychiatrists from the nearest community mental health clinic or mental hospital.

### Confidentiality

281. The problem of the confidentiality of "background" information has troubled us, as it has troubled every group that has studied the problem. (5). The dilemma is this: if the background information - the child's history, attitude, family relationships, and the like - is not made available to the child, then the court, in disposing of the case, may be acting on false or incomplete reports. There is the danger that the court will then make a disposition that is felt to be unjust by the child or his parents, or indeed, by the public. On the other hand, probation officers, social service agencies, psychologists and psychiatrists insist that confidentiality is essential if they are to be able to obtain confidential information from school teachers, neighbours and other sources. Moreover, disclosure of some kinds of information may have harmful effects on the child as, for example, when he discovers that he is illegitimate or that his mother is a prostitute.

282. The New York Family Court Act solves the problem by empowering the court "in its discretion (to) withhold from or disclose in whole or in part to the law guardian, counsel, party in interest, or other appropriate person" this type of information. (6). The procedure in the English juvenile court is quite different. The child must "be told the substance of any part of the report bearing on his character or conduct which the court considers material....". (7). The parent must also be told the substance of any material part of the report relating to him.

283. Under both procedures the ultimate protection of the child's interests is the responsibility of the court. The English procedure places heavy demands on the court's time; the New York procedure on the court's skills. We recommend that all reports received by the court should be disclosed to the child's counsel. It will then be counsel's responsibility to decide how much of the information disclosed therein should be revealed to the child or his parents. (8). In exercising his responsibility he will have the great advantage that the child and his parents repose their confidence in him. Where the child is defended by a person

other than legal counsel that person, even if the parent, should be permitted to peruse the reports if he so requests. We think that, ordinarily, the court should direct, in such a case, that the contents of the report are not to be disclosed to the child without express permission of the court. We doubt that adoption of our recommendation will deter the presentation of frank and full reports to the courts.

### Detention Facilities and Practices

284. We examined earlier the nature of detention facilities available to the court and detention practices in relation to the problem of ensuring that the child will appear for the hearing. At that point we recommended, in effect, that detention should be used basically only to ensure that the child would appear for the hearing, or to prevent a child who was likely to engage in serious anti-social conduct from so doing. Should detention also be allowed solely for the purpose of assisting the court, after the hearing, to decide on a proper disposition of the case before it? Two considerations are relevant. On the one hand, detention offers an opportunity to observe a child in a setting uncontaminated by the surroundings that may have contributed to the delinquent behaviour. On the other hand it should be noted that some children have been held in detention for as long as three months awaiting a clinical assessment. We do not think that the advantages to the court in learning more, and still more, about the child justify the use of detention for that purpose. Psychological and psychiatric examinations can often be carried out without holding a child in an institution. If it is decided that detention for examination is to be permitted, there should be a limit on the length of time that a child can be held. Our information is that three weeks is ordinarily sufficient for a thorough assessment. If more time is required an application should be made to the court for authority to detain the child for an additional period, not exceeding two weeks. To hold children for longer periods without a final disposition would seem likely to add to the problems already faced by the child.

### Powers of Disposition

285. In paragraph 180 we set out the powers of disposition given to the juvenile court pursuant to section 20 of the Act. The various disposition alternatives listed in section 20 are available only after a child is adjudged to be delinquent. Relevant also to an understanding of the juvenile court's powers of disposition is section 16 of the Act, which provides that the court "may postpone or adjourn the hearing of a charge of delinquency for such period or periods as the court may deem advisable, or may postpone or adjourn the hearing *sine die*." In the paragraphs that follow we examine these disposition alternatives in more detail. Specifically, we are concerned with the following matters: (a) the judicial screen; (b) adjournment *sine die*; (c) absolute discharge; (d) treatment prior to final disposition; (e) disposal of outstanding charges; (f) the fine; (g) restitution; (h) probation; (i) foster home placement; (j) committal



to a children's aid society; and (k) committal to a training school.

### The Judicial Screen

286. Earlier in our Report we analyzed the concepts of delinquency and neglect. (9). We pointed out that the distinction between delinquency and neglect is in some ways an artificial one. Viewed descriptively - that is, in terms of his behavioural problem - the delinquent child is often one who has suffered deprivation not unlike that which characterizes the child who is considered to be neglected. Many children charged with having committed a delinquency could, in fact, have been dealt with as being in "moral danger" or in a state of "neglect", as these terms are defined under the broad provisions of provincial child welfare legislation. It is perhaps worth noting in this connection that the child welfare statutes of most provinces include within the definition of "neglect" circumstances that may not depend at all upon a demonstration of parental fault in the usual sense. The result is, as again we pointed out, that it is frequently a matter of accident whether a child is charged with an offence, and found to be "delinquent", or brought before the court under child welfare legislation and given the label of "neglected child". Our conclusion was, however, that the fact that delinquency and neglect do not, as a descriptive matter, always identify different children is not a justification for abandoning the distinction between these two concepts for legal purposes. What is required, we have suggested, is a means of ensuring that the decision as to how any case proceeds is reached on a rational basis. We indicated that this could be achieved, in part, through the intake procedures of the juvenile court. (10). We further suggested that another way of accomplishing the desired result is to make available to the judge disposition powers sufficiently flexible to enable him, at any stage of a proceeding under the federal Act, to suspend further action and make an order under - and to the extent permitted by - provincial legislation relating to neglect or to the class of children that we have chosen to designate as being "in need of supervision". (11). The term "in need of supervision" applies to the group variously described as incorrigible, unmanageable, or beyond control of a parent or guardian.

287. What would be desirable, in our view, is a legislative scheme along the lines again suggested by the new Family Court Act of New York State. This would involve, not only a separation between the adjudication and disposition stages of a proceeding, but also, in effect, a refinement of the adjudication process as well. (12). The offence and disposition provisions in the Act would be structured in such a way as to provide that a finding that the facts alleged have been proved does not lead automatically to an adjudication that a person is a child or young offender, or even that he has committed a "violation". It forms instead the basis for an investigation by the juvenile court into the circumstances of the case and the background of the offender, and following this, for some further order by the court. This order may be a finding that the person is a child or young offender, or that he has committed

a "violation". Alternatively, where the court deems it expedient not to impose any specific measures against the child, the court would have the power to discharge the offender without entering a formal judgment against him. We deal further with this point later. (13). As still another alternative, it would be open to the court to direct, to the extent and in the manner authorized by provincial statute, that proceedings should be instituted under the appropriate provincial legislation in order that the child may be dealt with as being neglected or "in need of supervision". In the result, the court would be in a position to perform a screening function, even at a late stage in the proceeding, and to decide that the matter is one that should preferably be dealt with as a welfare rather than as a delinquency matter. To what has been said above we would add the observation of Dr. Glanville Williams, that "it is most undesirable that a child should be subjected to two different court proceedings in respect of the same conduct, and .... there is .... need for legislation permitting a court which acquits of crime to make a 'care or protection' order if the facts show that the legal foundation for such an order exists." (14). The need to which Dr. Williams refers is met under the New York statute by a procedure whereby the judge may, on his own motion, substitute for a delinquency petition either a neglect petition or a petition to determine whether the child is one "in need of supervision". (15). We would hope that some similar procedure - one consistent with the rights of all parties affected by the proceedings - could be developed as part of Canadian law.

288. There are certain other advantages to this suggested procedure that are worth noting. We have emphasized that it is improper for a court to arrange a psychiatric examination of a child or to direct that a social investigation be prepared prior to establishing that the offence alleged has been committed, except in certain limited situations that we have mentioned. One reason why the court may wish to conduct inquiries of this kind is to establish whether or not some form of welfare proceeding might be preferable to proceedings under the federal Act. Under the procedure that we propose the court could have the advantage of such investigations before making a final disposition of a case. In the same way, this flexible disposition procedure would serve, as we see it, to remove any remaining need that still exists for the doli incapax rule. The object of the doli incapax rule - we have discussed the rule in paragraphs 117 to 119 - is to ensure that a child is not convicted of an offence where he has not sufficient moral discretion and understanding to appreciate the wrongfulness of his conduct. One of the difficulties with the rule is that it is not clear how the court is to secure the necessary background information upon which to base its judgment without considering matters that are not properly before it until a finding of delinquency has been made. The proposed new procedure would leave it open to the court in any appropriate case, including the kind of situation to which the doli incapax rule is addressed, to make a disposition that does not involve entering an actual judgment against the child.

Adjournment "Sine Die"

289. In 1961 juvenile court judges in Canada adjourned sine die some 1,003 of the 15,024 cases coming before them. Adjournment sine die has two limitations as a disposition device. First of all, it makes no allowance for the case where the court may wish to discharge the offender, even though the case against him is made out. While it was clear to the Committee that some juvenile court judges do discharge offenders in these circumstances, the Act itself does not seem to sanction this practice. A number of judges expressed the opinion that adjournment sine die tends to keep an incident alive in a child's mind and said that for this reason they would actually prefer in many cases to enter an order of dismissal. Secondly, the adjournment sine die device does not, strictly speaking, permit the court to order any kind of treatment. We have been told that it is not uncommon for juvenile court judges to indicate that they are prepared to adjourn a matter sine die, without proceeding to an actual finding of "delinquency", provided that the child and his parents agree to follow a specified course of action, which may include making restitution or accepting the supervision of a probation officer. But again, there is no authority for action of this kind - and, indeed, the dangers of such ad hoc improvisations are apparent. There is, of course, a basic objection to permitting any substantial interference in the life of a child in the absence of a formal adjudication that the child is an offender. Nevertheless, we think that there are cases where treatment or supervision involving interference of a minor character only could usefully be ordered without an actual finding of "delinquency", if it is established that the alleged offence has been committed - and if the court's power is strictly limited by statute. Having regard to these deficiencies of adjournment sine die as a method of disposition, we suggest that new disposition alternatives should be made available to juvenile court judges to permit them to accomplish, with proper legal sanction, the purposes for which the adjournment sine die procedure is, in fact, often being employed at the present time.

### Absolute Discharge

290. In many cases the fact of a court appearance itself may be all that is necessary to ensure that a child does not engage in further anti-social conduct. The shock of apprehension and of a formal court proceeding make it clear to the child that society has set limits that must be observed. Where the court is satisfied that the child has learned this lesson, it may wish, in order to minimize the stigma that attaches to proceedings in respect of an offence, to discharge the child without making a specific finding of delinquency. As we have indicated, many courts attempt to accomplish this result at present by means of adjournment sine die. We think that the power to order the discharge of an offender should be granted expressly by the Act and we recommend an amendment to this effect.

291. It is to be observed that the New York Family Court Act carries the principle of "absolute discharge" one step further. The Act provides that before the court may adjudicate a child to be delinquent it must find, in a separate dispositional hearing, that the child "requires supervision, treatment or con-



finement". In the absence of such a finding the petition must be dismissed. (16). The possible implications of this procedure can be seen in the suggestion of one author that the danger of stigma "imposes on the court the responsibility of weighing the advantages of immediate help (under the actual limitations of staff, time and facilities) against the possibilities of ultimate harm in school and the labour market. The court is not free to consider whether the child needs help now but must also consider whether the need is sufficiently pressing to justify the risks of an adjudication." (17). We have considered the problem of stigma previously in this Report and deal with it again in connection with the matter of juvenile court records. (18). It is sufficient to say here that we doubt that the decision on the question of discharging a child should depend upon a weighing of "the advantages of immediate help .... against .... the risks of an adjudication". A child who needs treatment should receive it; the detrimental incidents of a court finding of delinquency should be attacked in a more direct manner. In any event, we think that there are many cases in which it is appropriate for the court to make a finding that a juvenile is a child offender or young offender with a view to the effect that such a finding may have on the juvenile, even if the court decides to suspend final disposition or to order the payment of a fine. We see no advantage in requiring the court to justify this kind of disposition by giving to the word "treatment" a meaning that it should not be called upon to bear. The device adopted in the New York statute represents a new departure in juvenile court procedure and for this reason we have seen fit to call attention to it here. We are not persuaded, however, that it should be introduced into the Canadian Act. Our Act directs that the court shall have reference primarily to the needs of the child. This, in our view, is a sufficient protection of the child's interests.

#### Treatment Prior to Final Disposition

292. We have suggested that there are circumstances in which treatment or supervision could usefully be ordered without the necessity of a formal adjudication that a child is an offender, provided that such measures constitute no more than a limited interference in the life of the child. Through the years several techniques have been suggested for providing control or supervision over an accused against whom an offence has been proved, while avoiding, at the same time, the stigma of a conviction or finding of delinquency. We note, for example, that the two devices of conditional discharge and probation without conviction were endorsed by the Fauteux Committee in 1956. (19). It seems to us that measures of this kind can be of particular value in dealing with the juvenile offender. In this same connection, it has been brought to our attention that there is a need for some provision in the Act that will permit counselling to be given to a child or young person within a legal framework that is not entirely destructive of the co-operative element that must be present if counselling is to be effective. (20). The legislative technique that commends itself to us is one that has been adopted in the new Minnesota Juvenile Court Code of 1959. Specifically, the Minnesota statute authorizes the court to order an adjournment for a period of ninety days "when it is in the best interests of the

child to do so and when the child has admitted the allegations . . . , but before a finding of delinquency has been entered." (21). The statute goes on to provide that the court may enter an order directing that during the period of adjournment "the child or his parents, guardian or custodian" receive counseling, or that the child be placed under the supervision of a probation officer or other suitable person in his own home under conditions governing his conduct and that of his parents, guardian or custodian. (22). If the period of adjournment is concluded without further complications, the case can then be dismissed without a formal adjudication of delinquency being made. Presumably any order of the kind authorized under this procedure would be discussed with the child and his parents and would be accepted by them as a less objectionable alternative to having a formal determination of delinquency entered immediately. We think that a procedure along the lines of that authorized under the Minnesota statute should be introduced into the Canadian legislation and recommend accordingly.

### Disposal of Outstanding Charges

293. Section 421 of the Criminal Code establishes a procedure whereby an accused who is in custody in one province and who has charges outstanding against him in another province may, with the consent of the Attorney General of the latter province, plead guilty to these charges before a court in the province in which he is in custody. The purpose of this procedure is to avoid a situation in which an offender who serves a sentence in one province is, upon his release from an institution, immediately taken to another province where he may be imprisoned again. As the Fauteux Committee observed, this procedure is "designed as a rehabilitative measure". (23). The same considerations that inspired its adoption are applicable to proceedings involving juvenile offenders. We recommend, therefore, that it should be made clear in any revision of the law that the procedure set out in section 421 of the Criminal Code applies to offences committed by juveniles.

### The Fine

294. Under the Act the court may impose a fine on a child "not exceeding twenty-five dollars, which may be paid in periodic amounts . . . ". (24). In 1961 a fine or restitution was ordered in some 2,011 of 15,024 court appearances. Most American statutes do not authorize the imposition of a fine, the reason being that a fine is regarded as a punitive measure inconsistent with the protective philosophy of the juvenile court. (25). In our opinion, however, the fine can serve a useful purpose. In certain types of cases, a mere finding of delinquency may not sufficiently impress an offender with the serious nature of his misconduct. Yet the circumstances may be such that the other forms of disposition provided in the Act would not prove to be appropriate. A fine may then be the wisest way of handling the child, even though ultimately it may be paid for him by his parents.

295. The almost unanimous opinion expressed in briefs submitted to us was that the maximum amount of the fine should be increased to one hundred dollars. We agree that the maximum amount should be increased. What may have been sensible in 1929 is not realistic now. Young persons today are often able to earn good wages and, accordingly, will be able to pay where a fine is regarded as the appropriate disposition. However, we think that the present limit of twenty-five dollars should be retained for an offender who is under fourteen years of age because younger children usually do not have an equivalent earning capacity. We think also that fines imposed under the Act should continue to be payable, at the order of the court, by instalments.

296. It has been brought to our attention that some juvenile courts follow the practice of imposing court costs on young persons found delinquent. We consider this practice to be inconsistent with the objectives of the juvenile court process. We recommend, therefore, that there should be no power under the Act to order payment of court costs by a child or young person.

### Restitution

297. The Act is not at all clear as to the power of the juvenile court to make an order of restitution against a child. In one recent decision an order of restitution by the juvenile court judge was set aside on appeal. (26). Section 20 contains no direct reference to restitution. It does provide, however, that the court may "take either one or more of the several courses of action herein-after .... set out", which include imposing "upon the delinquent such further or other conditions as may be deemed advisable....". Moreover, section 22 of the Act refers to "restitution" in a manner that seems to assume that restitution orders fall within the powers conferred by section 20. (27). It is apparent, in any event, that some judges do compel restitution by children found delinquent. In a recent reported case, for example, we find a juvenile appealing from an order of a juvenile court judge that he make restitution in the amount of one thousand dollars. (28). Thus the absence of any specific provision relating to restitution may well have had the effect in some cases of allowing orders of restitution to be made in amounts that are inconsistent with the purposes of the juvenile court process.

298. Whether or not restitution has any positive treatment value is a matter that has been much debated. We do find persuasive one particular objection to restitution. This is the fact that there may well be a tendency to bring children before the juvenile court with a view to obtaining restitution, even though some informal kind of disposition might be preferable from the point of view of the welfare of the child. On the other hand, failure to include a provision defining expressly the powers of the court in regard to restitution orders leads to the danger that orders exceeding reasonable limits will be made on the basis of the court's power to "impose .... such further or other conditions as may be deemed advisable....".



299. On balance, we think that the juvenile court should be authorized, in lieu of or in addition to any other disposition, to make an order of restitution against a juvenile offender, but only in a limited amount. It will be the responsibility of the judge to ensure that the objective of a juvenile court proceeding does not become distorted by the relief that is in this way available to injured parties. We suggest that restitution should be limited to an amount not exceeding one hundred dollars. We further recommend that the court should not have jurisdiction to make a restitution order against a child who is under fourteen years of age.

### Probation

300. The duties of a probation officer, as set out in the Act, are: ".... to make such investigations as may be required by the court; to be present in court in order to represent the interests of the child when the case is heard; to furnish to the court such information and assistance as may be required; and to take such charge of any child, before or after trial, as may be directed by the court." (29). We have already touched upon the probation officer's investigatory function. We are now concerned with such matters as the availability of probation services, the appointment and qualification of probation officers and the conditions necessary for the adequate performance of their duties.

301. At the outset, it is necessary to consider what probation is. From a legal standpoint, probation is a form of disposition under which an offender who has been found to have committed an offence may be released by the court, subject to the supervision of a probation officer and to certain conditions imposed by the court. In order to understand properly the implications of probation for the juvenile court system, however, it is important that probation be viewed, not only as a sentence or disposition of the court, but also as a correctional process. Professor Tappan explains: "In the former sense, it combines the suspension of a punitive sanction against convicted offenders .... with orders for treatment under conditional liberty in the community. In the latter sense it includes .... the personal supervision and guidance of selected offenders in accordance with the conditions that the court establishes." (30). As a correctional technique probation has developed from a relatively simple process whereby probation officers, in the words of the English Probation of Offenders Act, 1907, "advise, assist and befriend probationers", to a skilled operation in which extensive theoretical knowledge and case-work skills are brought to bear with a view to effecting a basic change in the attitudes and values of an offender. In appraising the calibre of probation services in Canada, therefore, the following matters must be kept in mind: (a) probation is a sentence of the law; (b) it is a preventive method of treatment; and (c) it depends for its success on the selection of the offender and on the care and supervision he receives. The implications of this brief analysis are clear. If probation is to make its intended contribution to the juvenile court process, there must be available to the juvenile courts qualified probation officers in numbers sufficient to allow adequate "contact time" with probationers under supervision. (31).

302. It was evident to the Committee that most juvenile courts in Canada are not provided with the kind of probation assistance that implementation of the juvenile court concept requires. In some provinces there are no probation services. Children placed on probation are ordered to report periodically to the police department in their own area, to their clergyman or, on occasion, to the juvenile court judge, the director of child welfare or even their own parents. In other provinces probation services have been established only since 1957. In no province are the services adequate. It is not necessary for us to identify individual provinces to make the point. Our data is based upon the situation as it existed in 1962:

- (1) Province "A" has seven probation officers who on occasion do juvenile and adult work. Their caseloads average from forty to fifty cases. Their salaries range from \$3,550 to \$5,880. These university-trained men receive no in-service training.
- (2) Province "B" has six probation officers in the field who do both juvenile and adult work. This province has no in-service training program. Salaries start at \$3,500 and advance to \$4,500.
- (3) Province "C" has sixteen probation officers whose caseloads range from seventy to ninety cases. Only a few of the officers have university training. There is no in-service training. A person with a Bachelor of Arts degree receives \$3,180 a year, and a person with a Master of Social Work degree receives \$4,380 a year.
- (4) Province "D" has thirty officers who do both juvenile and adult work. In one of this province's cities each probation officer has a caseload of ninety juveniles and fifteen adults and prepares approximately ten pre-sentence reports a month.

303. We do not see how the administration of juvenile justice can function satisfactorily without the provision of adequate probation services. That the present situation can exist in one of the world's wealthiest countries is not something of which Canadians can be proud. There is no need to repeat our suggestion concerning the financing of services. At this point we recommend the following steps to alleviate the problem:

- (1) Each juvenile court should have available to it the services of

at least one probation officer. The desirable goal is to have as many as the burden of work requires.

(2) The probation officer should devote his full time to work involving juveniles, although there may be circumstances where, with the approval of the judge of the juvenile court, he might engage in other correctional activities. Although it may be desirable to broaden the probation officer's viewpoint by affording him experience with adult probationers, we do not see how he can perform effectively all the functions that are expected of him if he is to be responsible for adult as well as juvenile probationers. In sparsely populated areas of the country it may not be feasible to appoint a probation officer whose services would be devoted exclusively to children. For this reason, the judge of the juvenile court should have authority to permit the officer to work with adults in the same geographical area.

(3) The probation officer should be responsible for pre-sentence investigation and for such personal supervision of a child or young person as may be directed by the court, whether by way of immediate disposition or as after-care following release from institutional commitment. At the present time, in many parts of the country, probation officers perform a number of other functions. It is quite common, for example, for probation officers to undertake family counselling in the community. They may have to assume the responsibility for locating foster homes and supervising foster home placements, for securing placements for psychotic, severely disturbed or mentally deficient children, for the collection of fines and restitution payments. Often they have responsibilities under provincial statutes, notably the enforcement of maintenance orders. Duties of this kind are time-consuming. They leave that much less time available for actual probationary supervision. If such duties are necessary - and frequently they are - then the probation staff should be increased. The assignment of collateral duties should not be permitted to interfere with the proper performance of the probation officer's primary function, which is to provide effective supervision and treatment for those children who can benefit from the probation encounter.

(4) A person having qualifications and capabilities necessary to perform the duties we envisage would be intelligent and well trained. He should be adequately paid. At the very least the probation officer should have a university education. In special cases equivalent experience in correctional or youth work may suffice. Representations were made to us that only qualified social workers should be permitted to engage in probation work. We do not think that social work qualifications are essential, however desirable they may be. The directors of some of the most advanced probation services in North America have indicated that there is no necessary correlation between social work training and success in probation work. In any case, the need for more officers to staff the services, both existing and needed, would preclude for many years to come an exclusive reliance upon the limited number of graduates of schools of social work. In-service training and orientation programs are, in any event, necessary. Our comments relating to the financing of services are relevant in this context.

(5) Research should be undertaken to determine (a) suitable caseloads for officers, and (b) proper criteria for the selection of offenders for probation.



These two matters are closely related. If juvenile offenders who do not need supervision are placed on probation, the caseload of the officer is thereby increased without any advantage to the community. In other words, we need to know what types of offender are likely to succeed without probation; and what types will probably fail, with even the best services, and why. The caseloads of most probation officers in this country are much too heavy. Unduly heavy caseloads result in insufficient supervision for the child and lowered morale for the officer. Although some agencies in the United States have formulated caseload standards we have not been able to find out whether these have been verified by experience or whether the same standards would be applicable in this country.

304. A proper study of the effectiveness of probation supervision would require an analysis, not only of probation caseloads, but also of the frequency of contacts between probation officers and probationers, the time spent in actual counselling, the duration of probation orders and the percentage of cases receiving intensive supervision. It would also require some assessment of the intangibles of probation supervision. Probation, it has been said, "like medicine, is midway between an art and a science. Neither diagnosis nor treatment can be entirely divorced from the personality of its practitioner." (32). Obviously it has not been possible for us to conduct a study of this kind. As an indication of some of the questions that must be asked, however, we have included as Appendix "F" a time study conducted in 1962 of the supervision of juvenile probationers in Ontario. This study was included in a brief submitted to us by the Probation Officers' Association of Ontario.

305. There have been suggestions made to us for amendments to the Act. A number of persons have called attention to the fact that the Act should make provision for the transfer of probation orders from one court to another. It is not uncommon for a juvenile who is subject to the supervision of the court to wish to move to a new place of residence outside of the court's jurisdiction. It should be possible, therefore, for a court in the area to which the child moves to take over supervision of a probation order. Another suggestion is that the provision that empowers the court to "commit the child to the care or custody of a probation officer or of any other suitable person" should be replaced by a provision empowering the court to "place the child under the supervision of a probation officer, or any other suitable person". As one submission explains, the existing provision "is not clear since it does not specify the import of the term 'custody' in relation to its duration, the effect upon parental rights of such an order, or the responsibilities (financial and legal) of the person to whom custody is awarded." (33). We endorse both of these recommendations.

#### Foster Home Placement

306. Almost indispensable elements of an environment in which the child will develop adequate social values are suitable parents or parent substitutes.

Inadequate or defective parents provide a social background that is linked in many instances with delinquency. A proper pre-sentence investigation generally will disclose whether the juvenile offender's conduct is likely to be improved by taking him out of an unfavourable home situation. It should also disclose whether the juvenile can safely be left in the community or should be confined in an institution for his and the community's safety.

307. Foster home placement is considered by many to be a "good thing" for the child who must be removed from his own home environment. Police agencies, for example, have argued that more use should be made of foster homes than of institutions. Several problems should be honestly and realistically faced: (a) who is responsible for finding a suitable foster home? (b) should the foster parents be paid for their work and by whom? (c) what is the legal relationship between the parents and the foster parents, and between the parents and the juvenile court? The Act is silent on all of these questions. For example, it merely empowers the court to order foster home placement; it does not indicate the agency or person responsible for finding the home. What happens in many juvenile courts is this: the judge may know of a married couple who are able and willing to act as foster parents. A child who is considered to be in need of foster home placement will be sent directly to this couple. In many cases, however, the judge may want to know more about the prospective foster parents before making the placement. He will then call in a children's aid society to investigate. If the judge does not have any foster homes available, various private child-caring agencies will be invited to take on the job. We emphasize one important fact. There is a serious shortage of foster homes, at least in the urban areas of Canada. It is no reflection on the private agencies when it is said that they have used their "right" of selective intake to concentrate increasingly not only on younger children but on those whom they feel will benefit most by their services. In practice this has meant acceptance of children whose families give promise of co-operation.

308. Under the Act the only method of financing foster home placement is the court's power "to make an order upon the parent .... of the child or upon the municipality to which it belongs to contribute to its support such sum as the court may determine....". (34). There are no provisions in the Act for payment to private agencies for capital costs expended in establishing special types of facilities. Some of the provincial statutes do provide capital cost allowances, but none to the extent of allowing 100 per cent of the cost.

309. Placing a child in a foster home does not terminate the guardian rights of his natural parents. Some private child-care agencies have refused to accept placements from juvenile courts for this reason. We do not understand why they should take this position. The same agencies undertake to care for other children over whom they do not have rights of guardianship, that is, children who are neglected or dependent. We recognize, however, that there may be ambiguities in the matter of the relationship between foster parent, court and natural parent. Such ambiguities should be eliminated in any new legislation.

310. Who then should be responsible for finding foster homes for those offenders who need them? In keeping with our basic aim of making one agency responsible for all matters affecting the delinquent, we suggest that it should be the court. However, the court needs the assistance of all responsible child-care agencies in this work. Some of the obstacles to full co-operation have been mentioned. Others arise from differing viewpoints. The child-care agencies argue that if the child's home situation cannot be remedied within a reasonable time the child should be made a permanent ward of the children's aid societies, because foster home placement implies a home situation that can be remedied without undue delay. If this is so, continuing case-work to the natural parents is essential so that the problem of the child and his family can be resolved. Under the Act the court cannot require any agency to undertake foster home placement. This should be changed and some means should be found whereby child-care agencies that receive assistance from government funds may be required by the court to assist it in its efforts to find foster homes. The agencies tend to complain, however, that they are not consulted at the stage in the procedure when their views are most important. As we understand the complaint, it is that the agencies are skeptical of the ability of the probation officer to determine that the child's home is unsuitable, and of the court's wisdom in choosing foster home placement as the best disposition of the case. One of the attributes of a private agency is its right to formulate its own criteria for accepting clients and to determine whether an applicant for its services meets these criteria. We appreciate the value in our society of having private agencies to undertake bold new approaches to social problems that are not open to the public agencies. Nevertheless, in practice, what is needed by the court are services that are available when required. In this context, the apt comparison is with commitment to training or industrial schools. Those institutions must accept all offenders sent to them. They do not formulate intake criteria, nor do they duplicate the work of probation officers and of the court in deciding whether the court has made a proper choice.

#### Committal to a Children's Aid Society

311. Many of the problems examined in connection with foster home placement have arisen in relation to the power of the court to commit a delinquent child to the charge of a children's aid society. These societies are private organizations whose work is usually supervised by the provincial government and paid for by the municipality and the province. Local branches have substantial autonomy. It has been a complaint of the societies that they are not consulted nor is their advice taken before the court commits a child to their care. They object that an order is frequently made even though they do not have the facilities necessary to fulfil their responsibilities under the order. We think that in the interests of maintaining good relations the court should consult the agency before making an order that affects it. However, the court's responsibility, both to society and to the child, is to dispose of the case in the way that it considers best. It is possible to argue, indeed, that whether or not a society wishes an order to be made is irrelevant, for the same reasons that it is



irrelevant where a training school is concerned. We recognize that many societies lack adequate financial resources. In the wealthy provinces the remedy may well be a complete revision of methods of financing. In the poorer areas of our country it may be necessary for the federal government to provide grants.

### Training School Committal

312. The Act empowers the court to commit a child adjudged delinquent to an industrial school. The term "industrial school" is not appropriate. Such institutions are now called "training schools" in most provincial statutes. The Act should be amended to conform with this usage.

313. The power of the court to commit a child to a training school is subject to one limitation under the Act. "It is not lawful to commit a . . . . delinquent apparently under the age of twelve years to any . . . . school unless and until an attempt has been made to reform such a child in its own home or in a foster home or in the charge of a children's aid society . . . . and unless the court finds that the best interests of the child and the welfare of the community require such commitment." (35). We agree with the philosophy that institutional commitment should be a last resort. It is a philosophy practised by most juvenile courts. It is a philosophy that should be extended to all juvenile offenders. We think that the Act should be strengthened in order to give more adequate expression to this approach to the treatment of the juvenile offender. (36). Institutionalization is regarded by the child and his parents as punishment, and this gives rise to all the impediments to treatment that punishment entails. Equally important, unless facilities are adequate, institutionalization has a detrimental effect on the rehabilitation of the offender. In the following paragraphs we examine problems of staffing, classification and facilities.

314. In some provinces training schools fall within the jurisdiction of departments exclusively concerned with the operation of penal institutions. In others they are the responsibility of the Department of the Attorney-General. In a number of provinces they are administered by departments of social or public welfare. There is no uniformity across Canada in terms of types or sizes of institutions, the number and qualifications of staff or the policies to be administered in the operation of training schools. An even greater problem is the fact that within individual provinces there is rarely to be found one governmental department that has an over-all responsibility for services for children. Indeed, in one province, no less than five departments are involved in providing such services, and co-ordination between them is apparently difficult to achieve. In varying degrees this situation exists in every province. The result is that it is rarely, indeed, that the best possible program is followed in the interests of the child. We limit ourselves to the statement that great improvements in the quantity and quality of services might be expected if, within each province, greater unification or co-ordination of effort could be achieved.

315. Canadian training schools, as a general rule, have inadequate facilities. Many accommodate numbers of children far in excess of their officially rated capacity. This means that in many instances there is very great overcrowding. Children are forced to sleep in double bunks in rooms that were not designed as sleeping areas. Gymnasiums are outdated and inadequate for the number of children to be handled. Office space is lacking - indeed in one institution the social worker was forced to vacate her office when the psychiatrist was in attendance. Many of the schools are old and decrepit. On the whole we can do no better than to quote from a report concerning children's institutions that serve one metropolitan area: "In a majority of the institutions, the drabness of the buildings is accentuated by the paucity of functional and attractive interior furnishings. With some exceptions, the buildings were so poorly furnished that there was no sense of attractiveness or anything which could interest children in their physical surroundings or development of any pride in the appearance of their dwellings." (37). We are satisfied that these observations would apply to a good many institutions throughout Canada.

316. Many training schools are located a substantial distance from large metropolitan centres. There are both cynical and idealistic explanations for this situation. The cynics maintain that training schools are conceived as public works to be used in areas of unemployment or as political gestures of one kind or another. The idealists suggest that in rural areas land can be acquired at lower cost, that in surroundings completely different from the slums whence the children come rehabilitation may more readily take place. Whatever may be the correct interpretation, the location of training schools in rural areas at a distance from large cities has important implications for staffing which we shall consider later. The majority of the children in these institutions come from the large cities. If they are located away from the cities it is more difficult to provide essential services and equally difficult for parents to visit and maintain contact. Such an impediment should not, unnecessarily, be placed in the way of fostering the family relationship.

317. It is not inaccurate to say that all provinces lack adequate reception facilities and the professional staff necessary to prepare an adequate assessment of the child who is committed to training school. In any case, even if there were staff and space for a proper classification program, the work would be of little real value because a sufficient variety of institutions is not available. In some provinces one training school receives all children under a given age, regardless of the reason for the child's committal to the school. This results in the committal to one institution of seriously delinquent children, dependent or neglected children who were beyond the control of the children's aid society, the very young offenders and even mentally defective children. Such institutions are usually not equipped with the special facilities needed to deal with these different types. One consequence of intermingling different types of children is the difficulty created for the staff. Some of the time a staff member spends with children must be devoted to exercising control. However, the more time the staff member spends in keeping control over children, the less time he will have to perform his primary task of rehabilitation.

318. Buildings are important in the rehabilitation process; staff is crucial. However, in no province is there sufficient staff either in quantity or quality to provide, effectively, the kind of treatment that the training schools are presumably established to provide. We use the term "staff" to refer to professionals - psychiatrists, psychologists and social workers - as well as to non-professionals. The co-operation of both groups is needed if the goal of rehabilitation is to be achieved. There is not one full-time psychiatrist on the staff of any training school in Canada. Only a few schools have a full-time psychologist and a few more have the services of social workers. It is not hard to find reasons for this unfortunate shortage of professional treatment staff. One is the fact that in many cases training schools are located at too great a distance from large cities to make commuting practicable. One does not reasonably expect a bright young professional to live and work in a small community that lacks most of the cultural and educational amenities that he and his family seek. The salaries offered by governments are usually equal to those paid by non-governmental agencies, but they do not begin to match the income that can be earned by a psychiatrist or psychologist in private practice. The necessary comment is sad but true: the well-to-do neurotic receives treatment from a private psychiatrist on a one-to-one basis; the one in a public institution, who probably has a more severe personality disorder, receives little if any psychiatric treatment. Those persons who are so dedicated to the welfare of children that salary is relatively insignificant can find ample scope for their talents in the cities.

319. The professional treatment staff is really on the fringe of the child's life in most institutions. The non-professional staff is in the centre. The latter are usually referred to as "custodial officers", a title that is, unfortunately, only too descriptive of their function. The minimum educational requirement is rarely more than grade ten, and is sometimes less. The non-professional staff (whom we shall call rehabilitation officers in keeping with a proper conception of their function) are not, in most cases, given any training before coming to the institution. Moreover, in many provinces the need for in-service training has not been recognized. (38).

320. Notwithstanding the shortage of professional treatment staff, as well as rehabilitation officers, there are some respects in which rehabilitation programs in some training schools are adequate. Such schools provide elementary and high school classes where the curriculum is equivalent to that of ordinary schools. They offer vocational training - carpentry, machine shop, sheet metal and auto mechanics for boys, and household economics and beauty culture for girls. However, in most cases even these programs suffer from overcrowding. They also lack specialized staff. In some provinces teachers in training schools receive lower salaries than teachers employed in ordinary schools. Children in training schools are difficult to teach. Many have learning problems. If the learning process is to be effective, highly qualified teachers are required. Salary scales that fail to take into account this obvious need cannot help but weaken the educational aspect of the training school's efforts at rehabilitation.



321. Although a training school can, theoretically, hold a child until his eighteenth or twenty-first birthday, depending upon the province concerned, in fact the average length of stay in the institution is from one to two years. This, also, is partly the result of overcrowding. The consequence is that many children are returned to their homes prematurely in order to make way for new children committed to the institution. It is true that by permitting a child to leave before the maximum permitted period of detention has expired, some training schools (which have wardship) are able to exercise supervision over him. However, here as elsewhere, between the appearance and the reality there is often a great gap. In fact, in very many cases, little supervision is provided.

322. One matter of some importance concerns the size of institutions. It is generally recognized that the prospects for successful treatment of many children are greatest in a relatively small facility where a "therapeutic atmosphere" is easier to achieve. (39). From this point of view, a good number of children in Canada are being placed in institutions that are too large. Nevertheless, there are difficulties that should be recognized. Smaller institutions are often more expensive to operate. In most cases they are unable to provide the variety of activities and services ordinarily regarded as desirable. As a practical matter, therefore, some compromise arrangement may be unavoidable in some areas if the essential objective of sound treatment planning is to be accomplished. The United States Children's Bureau, for example, have taken the position that the capacity of a training school be limited to 150 children, but continue: "To meet this standard some .... (jurisdictions) .... may find it necessary to break down their large institutions into administrative units of 150, with corresponding expansion of staff in order to maintain the integrity of an individualized program, at the same time working toward the establishment of diversified institutions for delinquent children which would permit a flexibility of treatment. " (40).

323. Our comments on the subject of training schools lead to the conclusion that there is room for improvement in some provinces, and room for great improvement in others. It seems to us that the provincial and federal governments have substantial interests in seeing to it that training schools operate effectively. If they are not effective, it is to be expected that many - and perhaps the majority - of their graduates will sooner or later find themselves in provincial prisons or federal penitentiaries, and in many cases solidly embarked upon a life of crime. In the light of this joint interest it is reasonable to expect that the provincial and federal governments would wish to discuss the development, staffing and operation of training schools, and the financial implications that would necessarily be involved.

#### Transfer to an Adult Institution

324. Section 26 of the Act directs: "No .... delinquent shall, under any circumstances, .... be sentenced to or incarcerated in any penitentiary, or county or other goal .... or any other place in which adults are or may be imprisoned." We have been told that the prohibition contained in section 26

creates difficulties in the case of certain older offenders. There are some juveniles who must be detained in a training school for a period longer than the ordinary offender and who are, consequently, often considerably older than most other young persons in the school. The presence of these older offenders is said to be detrimental to younger inmates. Moreover, the training school may not be an entirely satisfactory environment from the point of view of these older offenders themselves. They could, for example, receive vocational training at a level more suited to their age group in an adult institution. The suggestion is, therefore, that it should be open to the training school authorities to transfer certain older offenders from the training school to a correctional institution for adults.

325. There are basic objections to any such change in the law. Transfers of the kind proposed have received some attention recently in the United States, where the question has come before the courts in a number of cases. We can state the objections to such transfers no more concisely than by quoting from a leading American authority on juvenile court legislation: "This practice is unsound both legally and socially. Not only does it deny the transferred youngster, who thus becomes a 'prisoner', the protection of .... (regular) .... criminal proceedings .... but it also undermines the philosophy of the whole juvenile court movement, which was established primarily to protect the child from contacts with adult criminals and from being stigmatized as a convict .. ..".(41). It is noteworthy that the 1959 revision of the Standard Juvenile Court Act in the United States provides expressly that an institution to which a child is committed may not transfer custody of the child to an institution for correction of adult offenders. The comment appended to the provision in the Standard Juvenile Court Act explains: "A child so seriously disruptive of the institution's program that transfer is essential will, in so behaving, almost always have violated some law over which the criminal court has jurisdiction. A new proceeding should be commenced on that basis....". (42).

326. In our view, the power to transfer an offender from a training school to a correctional institution for adults should not rest with the training school authorities. If the juvenile court does not have the power to commit a child to an adult institution we fail to see how an institution receiving legal custody from the court can be justified in doing so. Should it be decided that some power of transfer is necessary, we recommend that the training school or other correctional authorities be required to make application for a transfer to the juvenile court judge, who would be authorized to make the appropriate order.

327. The foregoing is not intended to suggest that an amendment to section 21 (3) of the Penitentiary Act is either necessary or desirable. (43). That subsection authorizes the transfer to young offenders' institutions operated by the federal government of persons under the age of sixteen years who are confined in provincial institutions, where the officer in charge of that institution is of the opinion that any such person is unsuitable for training in the provincial institution. The new young offenders' institutions that will be operated by the

federal Penitentiary Service will be for the custody and training of persons between the ages of sixteen and twenty-three years, that is, a group only slightly older than those to whom the Act relating to juvenile offenders will apply.

### Other Facilities

328. We noted at the beginning of this Chapter that a proper implementation of the juvenile court concept requires that there be available to the court a flexible system of preventive and rehabilitative treatment measures. There are still other facilities that are necessary for an effective program of rehabilitation - facilities that are practically non-existent in Canada at the present time.

329. In many cases children who should be sent to hospitals with in-patient facilities for treatment of the mentally ill or to other specialized residential treatment centres are sent instead to training schools. The reason for this unhappy practice seems to be that hospitals and other treatment institutions control intake. The treatment programs of most hospitals are not designed to meet the special needs of psychotic or severely disturbed children, who in most cases cannot be accommodated in the same facilities as adults without serious disruption of the total treatment program. There is, in any event, a shortage of hospital beds. If in the opinion of the hospital authorities a bed cannot be provided, the child is not admitted. We are told that there is considerable reluctance on the part of the hospitals to accept children requiring psychiatric care on an in-patient basis. On the other hand, superintendents of training schools have no control over intake. A child who is committed to such a school must be admitted even if there is no bed available for him. Only a few of the large metropolitan areas have residential centres for emotionally disturbed children and these, it would appear, also have very restrictive intake policies. (44).

330. This situation is an unfortunate one. It has harmful consequences, not only for the children concerned, but also for other children committed to the care of the training schools. The Canadian National Conference of Training School Superintendents has stated in a submission to the Committee: "The administrators of training schools can say with sincerity that 95% of their time is spent on 5% of their population. Within this 5% are those for whom it would seem appropriate care either does not exist or is at a premium - the psychotics, the mental defectives, the epileptics, the diabetics, the brain damaged, the pregnant girls, the severely maladjusted. The range of maladies and malfunctions found in the majority of training schools not only occupy a grossly disproportionate amount of staff time, they severely reduce the effectiveness of the school's total programme." (45). The dearth of treatment facilities for children suffering from these various disabilities is a matter that has been brought to the Committee's attention time and time again in its meetings across Canada. We recommend that every effort be made to develop a network of services for the care of



children who are psychotic, severely disturbed or mentally defective. Provision of such services would in our view, contribute immeasurably to the improved operation of the juvenile court process.

331. Many children must be taken out of their homes and yet do not need the close control of a training school. Ordinary foster home placement is not satisfactory because these children lack the personality strength to enjoy the close relationships of family life. Again, many children released from training schools do not have families to whom they can safely return. Often such children could derive a great deal of benefit from a period of living in a small group in homelike surroundings under firm discipline, in some cases on terms of probation. A system of group foster homes, therefore, would be a valuable treatment resource for the juvenile court. By "group foster home" we mean a foster home in which approximately five to nine children of about the same age live under the supervision of full-time house parents. Similarly, there would appear to be a place for youth hostels, providing accommodation and supervision for a slightly larger group of appropriately selected young persons. Few such homes or hostels exist in Canada. We recommend that steps be taken to provide this "half-way" type of facility between ordinary probation and foster home placement on the one hand, and training school committal on the other. (46).

332. We think also that every effort should be made to experiment with new approaches to the treatment of the juvenile offender, and in particular with measures that are community-based. In England, for example, offenders between the ages of twelve and twenty-one who have been found guilty of an offence for which an adult could be sent to prison or who have failed to comply with the terms of a probation order, and who have not previously been the subject of a more severe sentence, may be ordered to attend at an attendance centre for up to twelve hours, in periods of not less than one hour and not more than three hours on any one occasion. (47). The Ingleby Committee has explained: "The aim of the treatment at attendance centres is to vindicate the law by imposing loss of leisure, a punishment that is generally understood by children: to bring the offender for a period under discipline and, by teaching him something of the constructive use of leisure, to guide him on leaving the centre to continue organized recreational activity by joining youth clubs or other organizations." (48). A somewhat similar program has been in operation in Boston for many years. (49). While it seems clear that this kind of program is unsuited to the needs of the older or more sophisticated offender, nevertheless there is evidence that an attendance centre order has proven quite effective with many younger or less experienced offenders. (50). Similarly, attempts have been made, apparently with some degree of success, to devise programs that bring to the treatment of the juvenile offender principles derived from sociological theory concerning the group nature of much delinquent behaviour, the object being to apply what is known about the processes of group interaction as a rehabilitative technique. (51). Programs of the kind outlined above merit careful and sympathetic study. They may well have an important contribution to make to overall planning in the field of delinquency prevention and control.

## After-Care

333. The importance of adequate provision for after-care has been more and more recognized by students of corrections. After-care is an integral part of the total process of rehabilitation. In effect, it is the last stage of treatment. Any society that is truly concerned with rehabilitating offenders, therefore, will regard a system of after-care as a necessary part of its legal and correctional arrangements for dealing with offenders. In the case of the juvenile offender, the first few weeks following release from an institution are a particularly crucial time in terms of readjustment. The young person may encounter considerable hostility in his neighbourhood. He may have to be integrated into the local school system and perhaps face rejection resulting from the knowledge that he has been an inmate of a training school. During this initial period of adjustment he requires guidance and emotional support. If this is not provided there need be little surprise if he turns to delinquent activity as a means of expressing his frustration or anxiety. It is for this reason that we have suggested that a compulsory period of after-care should follow as a normal consequence of release from a training school. (52).

334. The way in which an after-care service for juveniles is conceived in Canada varies from province to province. In some provinces after-care is the responsibility of the probation or welfare officer who makes the initial contact with the case. Under this system the officer visits the young person in the institution, works with the family in an effort to prepare the home environment for the young person's return, and attempts to work out with the institution and the family a plan for the young person's return to the community. Upon release the officer is available to provide supervision and guidance. One significant advantage of this system is that it gives continuity to the entire correctional experience. In other provinces after-care is the responsibility of a worker attached to the training school itself. The advantage claimed for this system is that the institutional worker will have a better knowledge of the young person than is possible for a probation officer, whose contact with the young person is, at best, intermittent. These two basic approaches represent idealized conceptions of the way in which after-care should be administered. In all but a few areas the service actually provided falls far short of the standard necessary to implement properly either of these approaches. There are still other provinces, we would add, in which little in the way of after-care planning seems to be undertaken at all.

335. We think that after-care should be compulsory and that it should be subject to the direction and control of the juvenile court. Supervision of children in the community pursuant to the direction of the court is pre-eminently the function of the probation officer, who is the court's agent for precisely this purpose. It would seem to us, therefore, that our proposals in regard to after-care supervision can most effectively be implemented if the responsibility for after-care is assigned to the probation officer, rather than to a representative of the institution. We see definite advantages in approaching the problem of after-care in this way. It is important, in our view, that after-care supervision

be provided by someone who is present in the community and who can thus be available to give assistance at the time when it is needed. We are impressed also with the desirability of ensuring an integrated and consistent approach in dealing with any offender. Preparation for release should properly begin almost from the moment of apprehension of the young person, and this objective can best be accomplished, as we see it, by an arrangement that concentrates upon relationships that are established and developed with the offender and his family, rather than upon an artificial segregation of correctional workers into categories of probation, institutional and after-care personnel. All of these considerations point, we think, to assigning after-care as a function of probation service. If more probation officers are necessary to implement such a scheme, it follows that every effort should be made to provide them.

336. We recognize, of course, that after-care is a matter that is primarily the responsibility of the provincial authorities, who administer both the training schools and probation services. Ultimately, therefore, each province must decide what after-care arrangements are appropriate to its own particular needs. For this reason we have limited our proposals for legislative change to the suggestion that, following release from an institution, every young person should be subject to the jurisdiction of the juvenile court for a period of up to two years, during which time he may be required by the court to observe certain conditions and to report to a probation officer or other designated person. We would, however, make one additional recommendation. We suggest that consideration be given to making federal assistance available to any province that wishes to increase the staff of its probation service in order to implement a more adequate program of after-care.

### Orders for Support

337. Section 20 of the Act provides that where a child has been adjudged delinquent and a disposition ordered by the court, "it is within the power of the court to make an order upon the parent or parents of the child, or upon the municipality to which it belongs, to contribute to its support such sum as the court may determine, and where such order is made upon the municipality, the municipality may . . . recover from the parent or parents any sum or sums paid by it pursuant to such order." It has been represented to us that in at least one province unnecessary difficulties have been created for municipalities against whom orders for support have been entered, particularly in the case of foster home placements.

338. Section 20 is said to be inadequate in several respects. First of all, where a foster home placement is ordered in proceedings under the child welfare legislation of the province and an order for support is made against the municipality, the rates payable by the municipality are established by law and are based upon actual costs of maintenance. Orders made under section 20 of the federal Act are not subject to the same controls. Secondly, while both the



federal Act and the provincial child welfare statute contemplate that the municipality may recover from parents amounts that the municipality has paid, more adequate provision is made in the child welfare statute to facilitate recovery by the municipality. Thirdly, the child welfare statute contains a provision defining with some particularity the place of residence of a child as a basis for determining which municipality should assume maintenance costs. The municipality to which the child belongs is in some cases a contentious question and the absence of a provision in the federal Act defining place of residence sometimes leads to embarrassing results. Finally, the provincial child welfare statute makes provision for reimbursing a municipality for part of the maintenance costs that the municipality is required to pay pursuant to orders of the juvenile court in proceedings brought under provincial legislation. It does not appear that this reimbursement is available to the municipality where payment is made by order of the court under the federal Act.

339. Because of these problems relating to support, some municipalities have urged that proceedings should be brought under child welfare legislation in any case where foster home placement is the appropriate disposition for the court to order. There are, however, objections to any such approach. The object of a proceeding for "neglect" under child welfare legislation in a large percentage of cases is to remove the child from the home. Accordingly, the desirability of a foster home placement will ordinarily be an important consideration in deciding whether or not proceedings should be instituted in the first place. In proceedings under the Juvenile Delinquents Act, on the other hand, it would often be very difficult to know in advance of the hearing what specific disposition the juvenile court will ultimately regard as being in the best interests of the child. Moreover, for reasons that we considered in discussing the distinction between "delinquency" and "neglect", it may be preferable in some cases to bring proceedings under the federal Act rather than under the child welfare statute, even where there exists a strong possibility that the court will decide to direct that the child be placed in a foster home. And again, not all cases in which removal to a foster home is indicated are cases of parental neglect. Many are cases in which tension between parent and child, unrelated to any failure to provide adequate physical care, has precipitated the child's conflict with the law. It seems to us that a juvenile court judge should have as many disposition alternatives as possible open to him in dealing with cases under the federal Act. Any amendment to the Act to limit the judge's power to order a foster home placement or his power to ensure proper financial support is, we think, undesirable in principle, (53). Nevertheless, we agree that the existing situation is an unsatisfactory one. In our view a more acceptable solution to the problem is to be found in some arrangement whereby the relevant provisions of provincial legislation relating to the financial liability of parents and municipalities would come into effect whenever an order for support is made by the court pursuant to the federal Act. We recommend, therefore, that appropriate amendments along these lines be considered in connection with any general revision of the law.

## The Juvenile Court Record

340. A troublesome question concerns the control of the record of a finding of delinquency. For example, in Canada the armed forces question prospective recruits on their involvement with juvenile as well as adult courts. It seems to be extremely difficult for such persons to enter the services. Similarly, private employers usually question job-seekers in regard to their juvenile court records. On some application forms the applicant is asked whether he has been "arrested" or "apprehended" or "taken or held in protective custody". We know that a child who has been found delinquent may face harassment in school. If the child, now an adult, comes before the court for sentencing as a result of a criminal offence, his juvenile court record may be considered by the judge.

341. It has been suggested that the juvenile court record of a person should be expunged if that child has led a blameless life for several years after the finding of delinquency. Such a proposal was rejected by the Ingleby Committee in the following terms:

" Any handicap does not arise from entries in police or other records, but from the facts. The records . . . . are not made available to employers, who must seek for such information as they want by asking the applicant himself and his referees. An employer naturally frames the question in the way he thinks most suitable, and disclosure of earlier court proceedings depends on the wording of the questions that are asked as well as the truthfulness of the replies. Any substantial alteration in nomenclature may lead to a change in the formulation of questions. " (54).

342. If it were thought to be desirable not to prejudice a person's employment opportunities because of his juvenile court record the remedy would appear to be this: an employer should be prohibited from questioning an applicant or his referees on that matter. The law already has the example of fair employment practices legislation which prohibits questions relating to race or religion. However, it is debatable whether such a prohibition by Parliament in the Act could constitutionally apply to employers other than those subject to Parliament in respect of employment practices. We recommend, in any event, that such federal legislation be introduced for enactment by Parliament. We should say that we do not think that the problem can ever be entirely solved by legislation. So far as possible attempts should be made to educate or persuade employers not to be prejudiced against a prospective employee solely because he has been found delinquent during his childhood.

343. The further question is whether official information relating to a person's juvenile court record should be barred, not only to prospective

employers, but also to adult courts. We suggest that different considerations apply to these two situations. The ordinary employer is concerned with making profits. He is not performing any public function nor does he represent the community. On the other hand, for the judge properly to fulfil his responsibilities as the community's representative in the sentencing function, he must have available all the relevant facts. One example should suffice to illustrate the distinction: A boy aged thirteen years is sent to a training school for sexual assault of a young child. He is released on his fifteenth birthday and from then until he seeks employment in his eighteenth year he has no further involvement with the law. Unless he is to become a charge on public welfare he must find employment somewhere and in such circumstances it is reasonable to prohibit questions by prospective employers concerning this juvenile offence. Suppose, however, that this same person, now an adult of twenty-five years, is again convicted for sexual assault of a young child. How can the court protect the interests both of the person being sentenced and of the community without knowledge of his juvenile misconduct? It follows, in our view that juvenile court records should be available for use in disposing of cases against the individual who is subsequently convicted in adult court.

#### Footnotes

1. Grunhut, "The Juvenile Court: Its Competence and Constitution," in Lawless Youth: A Challenge to the New Europe (Howard League for Penal Reform, Fry ed., 1947), p. 22, at p. 23.
2. Polier, A View from the Bench (1964), p. 35.
3. As one submission points out, "the presentence investigation has developed as one of the most important features of juvenile court procedure but it is not mentioned anywhere in the Act." Report on Juvenile Delinquency of the 1962 Legislation Committee of the Probation Officers Association - Ontario (1962), p. 8. It should be emphasized that the pre-sentence report serves several functions in addition to assisting the court in reaching a proper decision on the matter of disposition. These include: establishing the basis for treatment under probation supervision if the court so directs; providing information to assist the training school authorities in the event that committal to a training school is ordered. Elsewhere we draw attention to the importance of encouraging an integrated and consistent approach to the offender at all stages of the correctional process. See infra para. 335. The pre-sentence report contributes to this objective by facilitating the flow of information about the offender from one treatment agency to another. In addition, there have been suggestions that the legal status of the pre-sentence report and of the probation officer in the presentation of pre-sentence information to the court are by no means as clear as they might be.



For these reasons, there would seem to be merit in the view that as a minimum requirement the pre-sentence report should be the subject of a specific reference in the Act. Of interest in this connection is the Standard Juvenile Court Act, which provides: "Except where the requirement is waived by the judge, no decree other than discharge shall be entered until a written report of the social investigation by an officer of the court has been presented to and considered by the judge .... The investigation shall cover the circumstances of the offense or complaint, the social history and present condition of the child and family, and plans for the child's immediate care, as related to the decree ...."; and further, that "Whenever the court vests legal custody of a child in an institution or agency, it shall transmit with the order copies of the clinical reports, social study, and the information pertinent to the care and treatment of the child ....". Standard Juvenile Court Act, ss. 23 and 24, and comment at pp. 53-54.

4. There seems to be some question among a number of persons associated with the juvenile courts as to whether the court has, in fact, the power to order a psychiatric or other examination of a child, particularly in cases where the parents of the child object to the examination taking place. In actual practice, the courts appear to have experienced little difficulty in having such examinations carried out. Examination of the child by a psychiatrist, psychologist or physician will obviously be necessary in certain cases. The authority of the court to order the appropriate examinations, including tests for venereal disease, should be stated expressly in the Act. At the same time, the Act should make it clear that the court has no power to order any such examination, other than possibly a routine medical examination, prior to establishing that the child has committed the offence alleged against him.
5. See generally Regina v. Benson and Stevenson (1951) 3 W.W.R. (N.S.) 29, 100 C.C.C. 247 (B.C.C.A.); Ingleby Committee, paras. 207-217, pp. 67-69; Mannheim, "The Procedure of the Juvenile Court," in Lawless Youth, op. cit. supra note 1, p. 51, at pp. 72-74; Dembitz, "Ferment and Experiment in New York: Juvenile Cases in the New Family Court," (1963) 48 Cornell Law Quarterly 499, at pp. 514-521; Note, "Employment of Social Investigation Reports in Criminal and Juvenile Proceedings," (1958) 58 Columbia Law Review 702; Comment, (1964) 42 Canadian Bar Review 621.
6. New York Family Court Act, N.Y. Sess. Laws 1962, c. 686 as amended, art. 746. A useful discussion of the New York provision, including a review of the legislative history, appears in Dembitz, supra note 4, at pp. 514-521.

7. The summary Jurisdiction (Children and Young Persons) Rules, 1933, Rule 11.
8. The exercise of discretion in regard to the evaluation and disclosure of the contents of social investigation reports is one respect in which the "law guardian" concept may prove to be of particular value. We comment briefly on the "law guardian" concept at paras. 250-251 supra.
9. See supra paras. 96 and 108-109.
10. See supra paras. 266-269.
11. See supra para. 161.
12. See Lauer, "New Directions for Court Treatment of Youth," (1963) 12 Buffalo Law Review 452, at pp. 465-466; Paulsen, "The New York Family Court Act," (1963) 12 Buffalo Law Review 420, at pp. 435-437.
13. See infra para. 290.
14. Williams, Criminal Law: The General Part (2nd. ed., 1961), pp. 820-821.
15. New York Family Court Act, art. 716.
16. New York Family Court Act, arts. 731 and 751.
17. Lauer, supra note 12, at p. 466.
18. See infra paras. 102-103 and 340-343.
19. Fauteux Committee, pp. 13-15.
20. We think it useful in this connection to record a recommendation of the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada "that if section 20 of the Juvenile Delinquents Act is found to be inadequate to permit all the services of a counselling and advisory character that are desirable, it should be amended accordingly." Proceedings of the 43rd. Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada (1961), p. 32. See also The Courts of Justice Act, Revised Statutes of Quebec 1941, c. 15, s. 266g, as amended by Statutes of Quebec 1950, c. 10, s. 1.
21. Minnesota Juvenile Court Code, Minnesota Laws 1959, c. 685, art. 28.
22. Minnesota Juvenile Court Code, art. 28.

23. Fauteux Committee, p. 17.
24. Juvenile Delinquents Act, s.20(1) (c).
25. See Fradkin, "Disposition Dilemmas of American Juvenile Courts," in Justice for the Child (Rosenheim ed., 1962), p. 118, at pp. 119-120; Lou, Juvenile Courts in the United States (1927), pp. 146-147.
26. Regina v. Lee, (1964) 46 W.W.R. (N.S.) 700, 43 C.R. 142.
27. "Where a child is adjudged to have been guilty of an offence and the court is of the opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without restitution ....". Juvenile Delinquents Act, s.22(1).
28. Regina v. Lee, (1964) 46 W.W.R. (N.S.) 700, 43 C.R. 142.
29. Juvenile Delinquents Act, s. 31.
30. Tappan, Crime, Justice and Correction (1960), p. 539.
31. The importance of probation to the successful implementation of the juvenile court concept has been well stated in a report on State action in the field of delinquency prevention and control in the United States: "Weakness in probation services, probably more than in any other aspect of the correctional machinery, undermines the effectiveness of the juvenile court concept .... The most frequent disposition of cases is placement on probation. Yet too many children are still being sent to institutions or to the wrong types of institutions, because the judge was given inadequate information to make a decision based on the particular child's need for a particular kind of treatment, and because no other alternative was open to the judge. Enlarged caseloads also have made it impossible for most probation officers to do a good job of case supervision .... There is little opportunity for planned treatment, consultation, conferences with school guidance people, and other activities necessary for proper supervision .... When staff shortages thus make it impossible to do more than a perfunctory job, the rehabilitative process becomes a hollow shell, and failure with individual children on probation affords an excuse for attack on the whole concept of probation." Juvenile Delinquency: A Report on State Action and Responsibilities (Prepared for the Governor's Conference Committee on Juvenile Delinquency by The Council of State Governments, The President's Committee on Juvenile Delinquency and Youth Crime, and The National Council on Crime and Delinquency, 1962), p. 20.



32. Fry, "The Scope for the Use of Probation," in European Seminar on Probation (United Nations, ST/TAA/Ser. C./11, 1954), p. 66.
33. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association -- Ontario (1962), p. 9.
34. Juvenile Delinquents Act, s. 20(2).
35. Juvenile Delinquents Act, s. 25.
36. Several possible approaches might be noted. The California statute provides, for example, that in no case shall a ward of the court "be taken from the physical custody of a parent or guardian unless upon the hearing the court finds one of the following facts: (a) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the ward. (b) That the ward has been tried on probation in such custody and has failed to reform. (c) That the welfare of the ward requires that his custody be taken from his parent or guardian." California Welfare and Institutions Code, 1962, art. 726. Support for this approach has been expressed in Advisory Council of Judges to the National Council on Crime and Delinquency, Procedure and Evidence in the Juvenile Court (1962), p. 72. Another approach would be to require written reasons by the court in any case where a child is removed from the custody of its parents or placed in a training school. In this connection, see supra para. 175. Still another approach would be to state this governing objective in the interpretation section (the present section 38) of the Act. It is our impression that juvenile court judges pay a great deal of attention to the wording of section 38. This approach is adopted in the new Minnesota statute, which states: "The purpose of the laws relating to juvenile courts is to secure for each minor under the jurisdiction of the court the care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state; to preserve and strengthen the minor's family ties wherever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents." Minnesota Juvenile Court Code, Minnesota Laws 1959, c. 685, s. 1.
37. Sinclair, "Training Schools in Canada," in Crime and its Treatment in Canada (McGrath ed., in press).

38. We have not found it practicable to consider in any specific way the question of training requirements for persons employed in various aspects of delinquency prevention and control. We have, however, included as Appendix "G" a useful section on "Training of Personnel for Services to Juvenile Delinquency" that was contained in the Report of the Committee on Juvenile Delinquency of the Social Planning Council of Metropolitan Toronto.
39. "It is extremely difficult to operate a good treatment program in a large institution. Attention to the needs of the individual child is difficult in an oversized institution. Procedures for the administration of the institution are likely to be complex and cumbersome and to absorb an undue share of staff time. When separated from children by various levels of staff, the leadership and direction of the administration must filter through many persons. . . . The larger the institution the greater the tendency for communications to break down, particularly in situations that are handled most effectively in a person to person relationship. . . . In smaller institutions it is much easier to bring about teamwork, greater warmth, understanding and acceptance in terms of human relationships." U.S. Dept. of Health, Education and Welfare, Institutions Serving Delinquent Children: Guides and Goals (Children's Bureau, 1957), pp. 32-33.
40. Id., at p. 33.
41. Sheridan, "Gaps in State Programs for Juvenile Offenders," in Children (Nov. - Dec., 1962), p. 211, at pp. 213-214. See also Note, (1961) 47 Virginia Law Review 518.
42. See Standard Juvenile Court Act, s. 24 and comment, pp. 56-58, at p. 57.
43. Penitentiary Act, Statutes of Canada 1960-61, c. 53.
44. See Dept. of National Health and Welfare, Mental Health Division, Residential Treatment Services in Canada for Emotionally Disturbed Children (Report Series: Memorandum No. 5, April, 1962).
45. Brief submitted by the Canadian National Conference of Training School Superintendents (1962), p. 7.
46. See Tunley, Kids, Crime and Chaos (1962), c. 15. There is still another way in which the "half-way" type of facility can fill a valuable need. As one study has pointed out, "If the family of the child is broken and cannot be pieced together, the saving grace of the substitute home is that it can keep the child in a community with which he is familiar and a school where he is

known." Gorby, A Report and Recommendations on Co-ordination of Youth Services in Greater Vancouver and Greater Victoria (1964), p. 12. The possible implications of this for the juvenile court process as a whole are suggested in the following comment that one author has made on disposition practices in the juvenile court: "Whether a juvenile goes to some manner of prison or is put on some manner of probation . . . . depends first, on a traditional rule-of-thumb assessment of the total risk of danger . . . . evident in the juvenile's current offense and prior record of offenses; this initial reckoning is then importantly qualified by an assessment of the potentialities of 'out-patient supervision' and the guarantee . . . . inherent in the willingness and ability of parents or surrogates to sponsor the child. . . . The cumulative reckoning of offense and prior record being equal, those with adequate sponsorship will be rendered unto probation, and those inadequately sponsored to prison. . . . This may all seem reasonable to the reader and in a way it is. But do not expect it to seem either reasonable or just to a neglected or otherwise inadequately sponsored recipient of this sort of wisdom." Matza, Delinquency and Drift (1964), pp. 125-126.

47. Criminal Justice Act, 1948, 11 & 12 Geo. 6, c. 58, ss. 6, 19 and 48. Section 19 provides: "The times at which an offender is required to attend at an attendance centre . . . . shall be such as to avoid interference, so far as practicable, with his school hours or working hours . . . .".
48. Ingleby Committee, para. 288, p. 90.
49. See Maglio, "The Citizenship Training Program of the Boston Juvenile Court," in The Problem of Delinquency (Glueck ed., 1959), p. 634.
50. See McClintock, Attendance Centres (Cambridge Studies in Criminology, 1961), pp. 97-99.
51. See, for example, Empey and Rabow, "The Provo Experiment in Delinquency Rehabilitation," (1961) 26 American Sociological Review 679.
52. See supra para. 186.
53. A special problem may arise in a certain number of cases in which children require treatment, usually quite expensive, in a specialized residential treatment centre. This situation does not appear to have been contemplated in the drafting of the Act. We would expect that ordinarily in any such case the child would not be adjudged to be a child or young offender, but would be



dealt with under appropriate provincial legislation. In any event, the question of financial responsibility in this kind of case can be a matter of some importance. It is by no means clear that the imposition of financial responsibility of such an exceptional nature should be authorized by the federal Act. We make no recommendation on this point, other than to indicate the necessity of recognizing the problem in any review of the Act. The matter is one that should, we think, be the subject of discussion with provincial authorities.

54. Ingleby Committee, para. 235, pp. 74-75.



CHAPTER X

Introduction

344. The Juvenile Delinquents Act contains extensive provisions imposing liability upon the parent or guardian of a child brought before the juvenile court and, more generally, upon any person who can be shown to have contributed to the delinquency of a juvenile. In this Chapter we consider the issues of policy presented by these provisions. Specifically, we examine the following matters: (a) "punish the parent" laws; (b) restitution by parents; (c) contributing to delinquency; and (d) the jurisdiction of the juvenile court in relation to criminal offences committed by adults. A related question - the protection of the child witness - has been dealt with earlier in our Report.

345. There are two sections of the Act that are of principal concern. These sections are lengthy and detailed. However, because it will be necessary to refer to both at various stages of the discussion, we think that it may be helpful to set out immediately the relevant parts of these sections.

346. Section 22 of the Act relates to the liability of a parent or guardian who has conduced to the commission of an offence by a child. Its most important subsection reads:

" Where a child is adjudged to have been guilty of an offence and the court is of the opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without restitution or any other action, the court may, if satisfied that the parent has conduced to the commission of the offence by neglecting to exercise due care of the child or otherwise, order that the fine, damages or costs be paid by the parent or guardian of the child, instead of by the child." (1).

347. Section 33 of the Act creates the offence of contributing to delinquency. Criminal liability is imposed under two different subsections. In each case proceedings may be brought either in the juvenile court or in the ordinary criminal courts. It is important to note that liability extends to parents as well as other persons. The relevant subsections provide as follows:

" (1) Any person, whether the parent or guardian of the child or not, who, knowingly or wilfully,



- (a) aids, causes, abets or connives at the commission by a child of a delinquency, or
- (b) does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent or likely to make any child a juvenile delinquent,

is liable on summary conviction before a Juvenile Court or a magistrate to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding two years or to both fine and imprisonment.

(2) Any person who, being the parent or guardian of the child and being able to do so, knowingly neglects to do that which would directly tend to prevent said child being or becoming a juvenile delinquent or to remove the conditions that render or are likely to render the child a juvenile delinquent is liable on summary conviction before a Juvenile Court or a magistrate to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding two years or to both fine and imprisonment."

348. In addition to these two sections of the Act there is one section of the Criminal Code that should be noted. Section 157 of the Code provides for the offence of corrupting children. It reads, in part, as follows:

" Every one who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in, is guilty of an indictable offence and is liable to imprisonment for two years." (2).

#### "Punish the Parent" Laws

349. The Committee received a number of suggestions that the Act should be reviewed with a view to placing greater responsibility upon the parent or guardian of a child who engages in delinquent behaviour. Some persons have been concerned about the problem of restitution. There have been recommendations that the Act should be amended to provide specifically that the juvenile court judge may order that a parent or guardian make restitution for

damage or destruction caused by a child found to be delinquent. We deal separately with the question of restitution later in this Chapter. Others have drawn attention to the fact that, under section 22, it is sometimes difficult to establish as a matter of evidence that "a parent or guardian has conduced to the commission of the offence by neglecting to exercise due care of the child or otherwise....". In order to remedy this alleged defect, some have recommended that section 22 should be amended to conform with a provision that appears in the Children and Young Persons Act in England, and also in similar legislation enacted for Scotland. The United Kingdom law provides that, where the offender is under the age of fourteen, any fine, damages or costs imposed by the court must be paid by the parent or guardian "unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence....". (3). In other words, in many cases the onus is placed on the parents to establish that there was no failure on their part to exercise due care of their child.

350. Before considering these proposals, we think it important to emphasize that the "punish the parent" approach has been repudiated by almost everyone who has made a careful study of the matter. For example, two important draft statutes prepared by committees of experts in the United States - the Standard Juvenile Court Act and the Model Penal Code - contain no provisions of the kind that are still part of Canadian law. In each case the omission was deliberate. (4). Professor Tappan speaks of "punish the parent" laws as a "singularly futile expression" of the "recognition of the family's vital relationship to delinquency", and notes that "it has been fairly generally agreed that this approach has succeeded no more than could have been expected." (5). Indicative of the controversy that this question has caused are the emphatic comments of still another noted authority on juvenile court legislation: "Wherever the concept takes hold that parents who fail should be punished, it should be exposed as a delusion....". (6).

351. The objections in principle to provisions of this kind are perhaps nowhere better stated than in the recent Report of the Kilbrandon Committee in Scotland. Because of the importance of the issue involved we quote at length. The Kilbrandon Committee noted that there had been proposals "for (a) the greater use of fines .... against parents for the misdemeanours of their children, (b) requiring parents to make financial restitution for damage caused as a result of their children's delinquent behaviour, and (c) the placing of parents directly under compulsory measures of supervision in consequence of their children's misdemeanours." (7). While recognizing that such proposals were "aimed at bringing home to parents their responsibilities", and, in this way, "strengthening and furthering those natural instincts for the good of the child which are common to parents", the Kilbrandon Committee rejected any such approach on the following grounds:

" We have found great difficulty in reconciling such proposals with their declared aims. .... We

recognize that there may be a variety of situations falling short of the stringent standard of criminal neglect in the legal sense, in which children may be the sufferers and in which there may equally be present many of the factors of incipient delinquency (in some cases leading to the actual commission of acts of juvenile delinquency). Such situations are, however, scarcely capable of being stated in a form which would ever be appropriate to the criminal law. With hindsight one can say that such and such a parental failure contributed to this child's delinquency; it is an entirely different matter, with different children all with different needs, to attempt to state parental duties in such a form that criminal sanctions might be applied. In a free society, we do not consider that proposals for so sweeping an extension of coercive powers against adult persons - on the basis of facts and circumstances falling far short of any existing standard of criminal neglect or criminal misconduct - could ever be tolerated as a result of proceedings instituted in a juvenile court ostensibly concerned with the child's delinquency, or, in some cases, incipient delinquent tendencies.

.....

The principle underlying the present range of treatment measures is .... primarily an educational one, in the sense that it is intended, wherever possible, not to supersede the natural beneficial influences of the home and the family, but wherever practicable to strengthen, support and supplement them in situations in which for whatever reason they have been weakened or have failed in their effect. Proposals for a more sweeping extension of coercive powers in relation to parents of juvenile delinquents are in our view not only unacceptable on general grounds .... but are ultimately incompatible with the nature of educational process itself, more particularly in the context of the parent-child relationship. Such a process of education in a social context .... essentially involves the application of social and family case-work. In practice, this can work only on a persuasive and co-operative basis, through which the individual parent and



child can be assisted towards a fuller insight and understanding of their situation and problems, and the means of solution which lie to their hands .... We consider that the alternative already discussed, based as it is on the view that in matters so closely concerning their children the co-operation of parents as adults persons can be enlisted by compulsive sanctions, is fundamentally misconceived and unlikely to lead to any practical and beneficial result." (8).

352. So far as we have been able to judge from the limited accounts available, wherever the "punish the parent" approach has been attempted the results have been at best inconclusive, and more probably negative. (9). Indeed, an objection that has been made to provisions of this kind is that they themselves contribute to delinquency, in that their use often creates a number of conditions that promote delinquency. Generally, it seems, the effect is to aggravate still further an already disturbed family relationship. The parent tends to respond to punishment by increasing his hostility to, and rejection of, the child. The child in turn reacts to the parent's anger by getting into further trouble. Moreover, such a law places a tremendous weapon in the hands of an angry child. Cases have been recorded of children causing substantial monetary damage as a way of getting even with parents, who they expect will be fined or required to make restitution. The writers of one article have commented in this connection: "Parents, whether good or bad, cannot easily be turned into deputy sheriffs. Nor, in a democracy, do we take happily to the idea that one person may be held a hostage for the good behavior of another." (10).

353. In assessing the value of provisions of this kind, we think it important also to take into account the way in which an appearance in juvenile court is ordinarily experienced by a parent. It seems evident from recent studies that, quite apart from the prospect of a specific order being made against them, parents tend to feel that, in a sense, they themselves are on trial when they appear with their child in juvenile court. (11). Many report extreme nervousness. Even the fact that they are given notice to attend causes embarrassment to many parents. Where the father must attend, he incurs the risk of additional embarrassment at his place of employment, and also the possibility of a loss of wages. Thus the juvenile court appearance itself has about it a punitive aspect from the point of view of the parents. Equally important, particularly in the light of the Kilbrandon Committee's observations, is the fact that there is reason to believe that the juvenile court experience sometimes has the effect of undermining the capacity of a parent to cope with the child. As one writer with long experience in juvenile court work has reported: "Along with their feelings of bitterness and failure .... parents often experience a severe regression in their ability to act as adequately as they did prior to the hearing. Increased inadequacy, unnecessary dependency, a flagrant refusal to perform

normal parental duties, and a hostile use of the court against the child are possible behavioral results ....". (12). Relevant also is his conclusion - that "the child's perception of his parent's worth may be seriously damaged by court action unless steps are taken to recognize and support the parent's continuing function ....". (13).

354. For reasons suggested by the preceding discussion, we are unable to accept the view that section 22 of the Act should be extended to impose greater liability upon a parent in respect of the unlawful behaviour of his child, or to shift the burden of proving that a parent has exercised due care of his child. Indeed, there is one respect in which some restriction on the present scope of section 22 seems clearly to be desirable on "due process" grounds. This concerns the status of a parent before the juvenile court. A parent is present in juvenile court, if at all, only because he has received notice pursuant to section 10 of the Act, which provides that "notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child....". Section 10, in other words, advises him only that there is an allegation of delinquency against his child; it does not advise him that the proceedings may involve an inquiry into his own responsibility and that he may himself be subject to a penalty. Consequently, a parent may attend and find that, in the course of the hearing, the nature of the proceeding has changed and that, without any notice to him, he is, in effect, on trial. Moreover, should the parent not attend, an order may still be entered against him, the notice served pursuant to section 10 being taken, by reason of another clause in section 22, to be a sufficient guarantee of his rights. (14). It should be noted also that section 22 further provides that the fine that can be assessed against a parent is determined, not by the limits otherwise provided in the Juvenile Delinquents Act, but by reference to "the amount fixed for a similar offence under any provision of the Criminal Code." (15). This entire procedure seems, to say the least, highly irregular, if not an outright departure from recognized standards of justice. Quite apart from the other policy reasons that we have considered, therefore, we think it evident that some revision of section 22 is necessary.

355. The Standard Juvenile Court Act adopts an entirely different approach to the problem of dealing with parents than that represented by section 22 of the Canadian Act. It provides that, in support of any order made in respect of a child, "the court may require the parents or other persons having the custody of the child or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this Act, and who are parties to the proceeding, to do or to omit doing any acts required or forbidden by law, when the judge deems this requirement necessary for the welfare of the child." (16). The section then continues: "If such persons fail to comply with the requirement, the court may proceed against them for contempt of court." (17). In the result, liability is restricted to cases where parents or other designated persons have a clear indication of their responsibility, because this has been defined for them

by court order. Possibly more important, the effect of such a provision is that penalties will be imposed, not for the sake of punishment itself, but rather for failure to co-operate with the court in removing conditions that are causing difficulties for the child.

356. In our view the procedure as outlined in the preceding paragraph is preferable to that provided for under section 22 of the Juvenile Delinquents Act. We recognize that there are probably times when a juvenile court judge is justified in imposing a sanction upon a parent forthwith, as section 22 now contemplates. Nor do we discount the possibility that such action might, on occasion, have a beneficial effect. Nevertheless, we think that it should be the policy of Canadian law to discourage the use of penal sanctions against parents except in circumstances where there is an obvious failure of parents to co-operate with the court. We recommend, therefore, that section 22 of the present Act be replaced by a new provision along the lines suggested by that contained in the Standard Juvenile Court Act. We have already set out elsewhere a complementary recommendation, namely, that the juvenile court should have the power to compel the attendance of parents at a juvenile court hearing. (18).

357. We are persuaded, for the same reasons, that there should be a substantial narrowing of parental liability in respect of the offences of contributing to delinquency and corrupting children. These matters are considered later in this Chapter and we leave further comment on them until the appropriate point in that discussion.

#### Restitution by Parents

358. The civil liability of a parent for damage caused by his child is a very limited one - although less so, we might add, under the Civil Code of the Province of Quebec than at common law. (19). Generally speaking, a parent is liable at common law only: where the child has acted with the knowledge, consent or participation of the parent; where the child can be said to have committed the act in the course of his employment as a servant of the parent; where the parent in controlling the child's activities, fails to take reasonable care so to exercise that control as to avoid conduct on the part of the child exposing the person or property of others to unreasonable danger; or where the parent, by reason of previous experience with the child, is considered to have knowledge of the child's mischievous propensities. (20). The damage caused by children is sometimes quite substantial. Apparently municipalities and other injured parties often experience considerable difficulty in obtaining the agreement of parents to make compensation for damage caused by children. Dissatisfaction with this situation, supported by a not uncommon sentiment that parents should be forced to accept greater responsibility for the conduct of their children, has led to suggestions that the juvenile court should be given a broad power to order restitution against parents of children brought before the court pursuant to the Juvenile Delinquents Act.



359. We have serious doubts as to the advisability of permitting the Act to be used as an instrument for securing this kind of legal redress. The reasons that we have given for opposing generally the "punish the parent" approach apply, in our opinion, with equal force to the matter of restitution orders against parents. Moreover, we are not at all satisfied that federal legislation relating to an aspect of criminal law should be concerned with altering, in effect, the common law or Civil Code basis of civil recovery. If it is considered that the existing liability of parents is not sufficiently extensive, it seems to us that the better course is to remedy the situation by appropriate provincial legislation. There is, in addition, the further objection that we have already noted in the previous Chapter in discussing the question of restitution from the point of view of the young offender himself, namely, the fact that the desire to obtain restitution can easily become an end in itself, to the detriment of the welfare of some children and of the real purpose of the juvenile court process.

360. As we have indicated, it is our proposal that section 22 of the Act should be abandoned and that it should be replaced by a new procedure similar to that established under the Standard Juvenile Court Act. The result would be to relinquish altogether any suggestion of imposing in the context of a criminal proceeding what amounts to a vicarious liability on parents and guardians for acts committed by children under their charge. This is not to say that parents would thereby be entirely free from moral or indirect pressures to make restitution. As a practical matter, it seems inevitable that some informal pressures will be brought to bear. Indeed, the Kilbrandon Committee, while opposing any provision requiring restitution by parents, observed: "Restitution on a voluntary basis, arrived at with the agreement of the parents, seems to us . . . to be highly desirable, and the present practice in some areas of inviting the co-operation of parents in this way is to be commended and encouraged." (21). Many parents now assume the responsibility for paying fines and fulfilling restitution orders imposed on their children by the court, and doubtless this practice will continue. By placing strict limits on the amount of restitution that can be ordered and by restricting the application of this measure to young persons over the age of fourteen - matters discussed in the previous Chapter (22) - it is our hope that any tendency on the part of courts to attempt to reach parents indirectly through their children can be kept at least within reasonable bounds.

### Contributing to Delinquency

361. Difficult and important questions of policy are presented by the offence of contributing to delinquency under the Juvenile Delinquents Act and its companion Criminal Code offence of corrupting children. Perhaps the most concise statement of some of the basic objections to these offences is to be found in an explanatory note appended to one of the draft sections of the American Law Institute's Model Penal Code. The note states, in part, as follows:

"Authorities concerned with the welfare of children have disavowed the loosely drawn statutes against contributing to delinquency. Experience has shown that such statutes are almost always invoked in situations specifically dealt with by other Sections of the Code, especially those concerned with sexual offenses. To the extent of the overlap, there is no need for the contributing statute. More important, the existence of this overlapping catch-all has been . . . . a means of avoiding legislative judgments, made in other sections dealing with specific offenses, on such matters as mens rea, punishability of consensual intercourse, proper grading of offenses, corroboration of complaining witnesses, and adequacy of proof generally. Finally, the contributing legislation embraces such a vast range of behavior as to make it completely meaningless as a criminologic category, treating as one class, for example, a rapist, a dealer who buys stolen junk from a fifteen-year-old boy, a narcotics peddler who lures high school children into drug addiction, and a parent who keeps his child out of schools where flag saluting is required.

The basic error that appears to account for the prevalence of the legislation here disapproved is the assumption that the comprehensive terms in which jurisdiction is commonly conferred upon juvenile courts over 'delinquent, dependent or neglected' children are also appropriate to define a criminal offense. It is one thing to give broad scope to an authority to promote the welfare of children, but quite another thing to give a criminal court equivalent latitude in defining crimes for which adults shall be punished . . . ". (23).

362. It was the State of Colorado in 1903 that first introduced an offence of contributing to delinquency into juvenile court law. (24). The Colorado idea was quickly adopted by most American States, and also served as the original model for what is now section 33 of the Canadian Act. Two principal considerations seem to account for the popularity of the contributing provisions. First of all, the offence of contributing to delinquency provided a means for bringing proceedings against adults into the juvenile court. In this way, it became possible to extend the protective atmosphere of a juvenile court hearing,

not only to child offenders, but also to children compelled to give evidence in respect of offences committed against them by adults. Secondly, the view has been widely held that criminal sanctions should be employed, as a preventive measure, to protect children against a wide variety of unwholesome environmental influences that might be expected to have harmful consequences for a child's moral development. It was this view that found expression in the offence of contributing to delinquency. Having regard to the apparent difficulty in defining in advance the variety of situations that might call for action on the part of the community, it was thought necessary to define the liability of adults in very broad terms lest the preventive objective of the law be thwarted. This rationale of the contributing provisions gained wide acceptance, both in Canada and the United States (25) - notwithstanding the obvious objection that such provisions fail to meet the standards of definiteness ordinarily required in a criminal statute. Illustrative of this attitude are the following observations of a New Mexico court: "The ways and means by which the venal mind may corrupt and debauch the youth of our land . . . . are so multitudinous that to compel a complete enumeration in any statute designed for the protection of the young before giving it validity would be to confess the inability of modern society to cope with juvenile delinquency." (26).

363. Despite the fact that the offence of contributing to delinquency has been part of the criminal law in North America for over half a century, surprisingly little is known about the circumstances in which the contributing provisions are actually invoked. So far as we have been able to discover, the matter has never been the subject of a systematic study anywhere in Canada. One thing that does seem apparent, however, is that offence provisions of this kind can be used for a number of purposes, not all of them related to the welfare of children. By charging an accused with contributing to delinquency in circumstances where he could have been charged with an offence under the Criminal Code, a prosecutor is, in effect, in a position to deprive an accused of the opportunity that he would otherwise have of electing trial by a jury or by a higher judicial tribunal. (27). We have been told, moreover, that a charge of contributing to delinquency is often laid because: (a) it is easier to get a conviction against an adult in the juvenile court than in the ordinary criminal courts; and (b) the juvenile court tends to impose heavier sentences upon conviction. In our view there is a very real danger of prejudice to an accused charged with contributing to delinquency - a danger that arises, in part, from the laxity that characterizes the conduct of proceedings in some juvenile courts, and, perhaps more important, from the tendency for the court's attitude toward an accused adult to be influenced by its protective feeling toward the child. This danger of prejudice is increased in some cases by denying to an accused charged with contributing, defences that would have been available to him had he been charged in respect of the same conduct under the relevant provision of the Criminal Code. For example, it is a defence to a charge under section 138 of the Criminal Code of having sexual intercourse with a female person between the ages of fourteen and sixteen "that the evidence does not show that, as between the accused and the female person, the accused is more to blame than



the female person." Similarly, it is a defence to a charge of seduction of a female person between the ages of sixteen and eighteen under section 143 of the Code that the female person was not "of previously chaste character". Out of concern for the protection of girls, the courts have held that any such defence is not available to an accused charged with contributing to delinquency. (28). It seems to us that by failing to distinguish between cases where a teenage girl is exploited and cases where the girl is a wanton - particularly where, as frequently happens, the male charged is not much older than the girl (29) - the law runs the risk of losing sight both of conventional mores and of its ultimate purpose. It becomes but an instrument for registering moral disapproval on the part of the community without serving in any way to deter similar conduct in others or to help the girl in question.

364. There is still another source of potential prejudice to an accused charged with contributing to delinquency. This arises from the inherent difficulty of the concept of contributing to delinquency as an offence category. For what, in fact, does contributing to delinquency mean? And what limits should be observed in receiving evidence in support of a charge? Is it desirable, for example, that a court should take into consideration "the moral character of the accused" or "the whole atmosphere and conditions under which a juvenile lives", both of which members of the Manitoba Court of Appeal have said are relevant and admissible evidence on a charge of contributing to delinquency? (30). While it is beyond the scope of this Report to trace the development of Canadian case law on the contributing provisions, we should say frankly that in our judgment the courts have yet to articulate a clear test for distinguishing between permissible and prohibited conduct. In many cases, therefore, liability to a criminal sanction will depend almost entirely upon the subjective, and sometimes highly speculative, assessment of the judge as to whether particular conduct is or is not such as to contribute to the delinquency of a child. It is true that the statute provides that it is not a defence to a charge of contributing "that the child is of too tender years to understand or appreciate the nature or effect of the conduct of the accused, or that . . . the child did not in fact become a juvenile delinquent." (31). In interpreting this provision the courts have said that it was "the evident intention of Parliament . . . to relieve the Court of the necessity of speculating as to whether or not the child's morals were in fact undermined . . .". (32). Nevertheless, the judge is often forced by reason of the indefinite character of the concept of contributing to delinquency to make precisely this kind of assessment. (33). As one judge has observed, the contributing provisions "place an obligation of self-imposed judicial self-restraint upon the courts." (34). Cases of failure to exercise this self-restraint are not difficult to find in the reported decisions. (35).

365. From a review of reported cases, there seems to be every reason to believe that in a large percentage of prosecutions under the contributing provisions a charge could have been laid under some appropriate section of the Criminal Code. (36). If it is considered desirable to have such cases heard in the juvenile court it would be quite possible, of course, to confer the necessary

jurisdiction upon the juvenile court without establishing a separate classification of offence to accomplish this result. (37). We deal further with the matter of juvenile court jurisdiction over adults later in this Chapter. In so far as the contributing provisions are concerned, it seems to us that the only essential question in issue is this: Is it necessary to have a vague offence category such as contributing to delinquency simply because there is difficulty in defining specifically the kinds of situations to which criminal liability should attach? We think not. (38). It is our recommendation, therefore, that the offence of contributing to delinquency should be abolished. (39). To the extent that this change in the law leaves situations for which penal sanctions are thought to be required, we suggest that Parliament should make provision in the Criminal Code for one or more new offences. Any such offence should be defined with a degree of precision consistent with accepted principles of criminal jurisprudence.

366. Section 157 of the Criminal Code is coextensive in part - although not entirely - with section 33 of the Juvenile Delinquents Act. As we have noted earlier, section 157 provides that anyone is guilty of an indictable offence and liable to imprisonment for two years "who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in. . . .". In our view, section 157 is unduly wide in its present form. We are fortified in this conclusion by our reading of the few reported cases in which section 157 has been invoked. (40). Moreover, we think that the maximum penalty provided in section 157 is unnecessarily heavy, having regard to the kind of conduct to which the section is addressed. While the section directs that proceedings shall not be commenced "without the consent of the Attorney General, unless they are instituted by . . . . a recognized society for the protection of children or by an officer of a juvenile court", (41) we do not regard this as a sufficient guarantee against abuse. We recommend, therefore, that section 157 of the Criminal Code be amended with a view to limiting both its scope and the penalty that can be imposed.

#### Juvenile Court Jurisdiction Over Criminal Offences Committed by Adults

367. The Committee has received a number of recommendations to the effect that the juvenile court should be given jurisdiction over certain designated Criminal Code offences committed by adults in circumstances where (a) the offence is one in which a child is the victim, and (b) the offence is committed by one adult member of a family against another and a child is affected because he is a member of the family. Some suggest that the juvenile court should be given exclusive original jurisdiction over such cases. Others say that jurisdiction should be concurrent with that of the ordinary criminal courts, with a discretion left to the crown attorney as to the method of proceeding. Specifically, the following sections of the Criminal Code have been mentioned: section 155 (parent or guardian procuring defilement of a

female child); section 156 (householder permitting defilement); section 157 (corrupting children); section 186 (failure to provide necessities where there is a child in the family); and section 231 (common assault), where the assault is by one member of a family on another and there is a child in the family. In supporting such an extension of the jurisdiction of the juvenile court, the Canadian Corrections Association submission states: "The aim . . . is to make it possible in those instances where it seems possible to rebuild the family to have the case heard in the more hopeful atmosphere of the children's court. . . . Those provinces that have family courts will no doubt provide that some of these charges be laid there." (42).

368. This question was the subject of some comment by the Ingleby Committee. It had been suggested that juvenile courts in England should be given jurisdiction to try adults charged with cruelty to, neglect of, or some sexual offences against children, with the juvenile court having the power to commit to a higher court for trial in more serious cases and the accused himself having the right to elect trial in a higher court. As the Committee explained: "The object . . . would be to ensure that proceedings in which the welfare of a child might depend on the court's decision should take place before a court accustomed to dealing with children. A secondary consideration would be that in many of these cases a child has to give evidence." (43). The Ingleby Committee rejected the proposal on the following grounds:

" If these were sufficient reasons for the change they would justify bringing a great many other categories of case before the juvenile court . . . . It would not be practicable to carry this suggestion to its logical conclusion, and those who make it seem to have forgotten or mistaken the object of juvenile courts. It is to enable children to be dealt with separately from adults in courts where -

- (a) the magistrates are 'specially qualified for dealing with juvenile cases';
- (b) the procedure is specially modified to suit children coming before the court;
- (c) there are restrictions on the time and place at which the court may be held and the persons who may be present at a sitting; and
- (d) there are restrictions on newspaper reports of the proceedings.

In general it would, we think, be retrograde to have



adults and juveniles being dealt with again by the same courts." (44).

369. In notable contrast to the point of view expressed by the Ingleby Committee is the position taken in the American publication Standards for Specialized Courts Dealing with Children - a position which is essentially that adopted in the 1959 edition of the Standard Juvenile Court Act. Provision for an offence of contributing to delinquency, the means whereby juvenile courts in the United States have traditionally secured jurisdiction over offences committed by adults, is expressly rejected in both of these American reviews of juvenile court legislation. (45). However, a basis for juvenile court jurisdiction over adults is developed in the Standards by reference to the following considerations:

" It would seem wise to allow the court jurisdiction over adults charged with actions against children where there is a continuing relationship between the adult so charged and the child before the court. If jurisdiction over both adult and child is not placed in the same court, the specialized court may decide that the child should continue to live in his own home on probation, or that protective supervision in the home is necessary, only to find that the other court has removed the parent from the home, or disposition in the child's case may have to wait on a long drawn-out procedure in the other court. There are other situations where an adult having a continuing relationship with a child may be charged with a criminal offense against the child yet no petition is filed to bring the child within the jurisdiction of the court; for example, where a father has molested his child .... These situations involve intense personal relations of parent and child and are better handled in a court equipped to understand and take into account factors in such a relationship.

Such reasons do not hold in the case of an offense against a child by an unrelated adult, or an adult who does not have a continuing relationship with the child. Many courts have obtained jurisdiction in such cases under the theory that greater protection can be afforded the child if the case is heard in the specialized

court. This theory does not seem sufficient justification to bring all such cases into the specialized court...." (46).

370. Still another approach to the matter of juvenile or family court jurisdiction over offences committed by adults is the scheme developed under the Family Court Act of New York State. (47). The New York statute gives jurisdiction to the family court over "any proceeding concerning acts which would constitute disorderly conduct or an assault between spouses or between parent and child or between members of the same family or household." (48). Any criminal complaint involving disorderly conduct or assault between such persons must be transferred by the originating criminal court to the family court, unless it is withdrawn within three days. (49). A serious case may be transferred at once if the local judge believes that it will be returned to him and he wishes to initiate the proper criminal procedures as soon as possible. The family court may, in its discretion and where family court procedures seem inappropriate, transfer a case to the criminal court. Where a case is considered appropriate for the family court approach, the matter is not dealt with as a criminal offence at all. Instead, a proceeding is instituted by the filing of a petition alleging the acts constituting the offence and praying for an order of protection or conciliation. As one commentator explains: "It is the intention of the Legislature to remove from the problems of family relationships the stigma of criminal charges, handling and disposition. It was considered unrealistic to burden a defendant with a criminal record of arrest and conviction of misdemeanors, even felonies, when the intention of all parties was mainly to secure proper support, or restore peace to a family." (50).

371. Under the New York plan, a petition to commence proceedings in the family court may be brought by the aggrieved person, by any other member of the household, by a duly authorized agency, by a peace officer, or on the court's own motion. Where proceedings are brought initially in the family court, the prayer may be for transfer of the case to the criminal courts. In the family court, the matter may be dealt with by the probation service and intake department in an attempt to solve the problem by adjustment, or it may be made subject to a formal hearing. Any petitioner may, however, insist upon access directly to the court. If a court proceeding ensues the court may dismiss the petition if it concludes that the court's aid is not required. Alternatively, the court may suspend judgment for not more than six months, or place the respondent on probation for not more than one year, or make an order of protection. Such orders of protection may include the following: (a) that the respondent shall stay away from the home, the other spouse or the child; (b) that he or she shall abstain from offensive conduct against the child or against the other parent or against any person to whom custody of the child is awarded; (c) that he or she shall give proper attention to the care of the home; and (d) that he or she shall refrain from acts of commission or omission that tend to make the home not a proper place for the child.

372. It would seem that the New York statute and the Standard Juvenile

Court Act differ in the emphasis that they place upon two competing considerations. The New York Act accepts the principle that criminal proceedings should, for the most part, be excluded from the family court, and since the legislature is obviously not prepared to discontinue the institution of criminal proceedings against adults in such cases, New York law allows a wide range of proceedings to be brought against adults, including parents, in the ordinary criminal courts. Moreover, the offence of contributing to delinquency is retained in the law and continues to apply to adult family members who have committed acts that may have contributed to the delinquency of a child in the family. The family offence provisions do not apply to charges of contributing to delinquency. In contrast, the Standard Juvenile Court Act lays greater emphasis upon the need for bringing together in one court all matters involving a continuing relationship within the family. With this objective in mind, it follows that it is regarded as acceptable to have some criminal proceedings against adults heard in the juvenile or family court. Consequently, "exclusive original jurisdiction" would be conferred by the Standard Act upon the juvenile court over, *inter alia*, "any offense committed against a child by his parent or guardian or by any other adult having his legal or physical custody." (51). This is subject to the right of the juvenile court and the accused to have the matter transferred to the ordinary courts.

373. In our view means should be available for bringing before a juvenile or family court, on one basis or another, certain less serious offences committed by adults involving family relationships. We would emphasize that any such extension of the jurisdiction of the juvenile and family courts makes it all the more important that highly qualified judges be appointed. Specifically, we make the following suggestions for changes in federal legislation relating to juvenile and family court jurisdiction over offences committed by adults:

- (1) The juvenile or family court should have jurisdiction over certain designated offences committed in circumstances where
  - (a) a child is the victim of an offence and there is a continuing relationship between the child and the adult charged, or
  - (b) the offence has been committed by one member of a family or household against another and a child is substantially affected by the proceedings. The jurisdiction of the juvenile or family court should be determined, not by any such formula itself - as it is, for example, under the Standard Juvenile Court Act - but by a statutory listing of the offences and circumstances that are contemplated. It is not our intention, in other words, to suggest that more serious



offences, such as incest, should be brought within the jurisdiction of these courts because of the continuing relationship with the child that is involved.

- (2) The juvenile or family court should, so far as practicable, have exclusive original jurisdiction in the situations designated. We think that this is preferable to giving concurrent original jurisdiction to the ordinary criminal courts. Many cases are disposed of on pleas of guilty. For this reason, and also in the interest of consistency in the administration of the law, we think it best that in every such case the matter should go first to the juvenile or family court.
- (3) For reasons that we have suggested in discussing the offence of contributing to delinquency, we think that the accused should be entitled to an election as to whether he wishes to be tried by the juvenile or family court or to have the matter transferred to the ordinary criminal courts. Similarly, the juvenile or family court should itself have the power to transfer any case to the ordinary criminal courts.
- (4) The Criminal Code should be reviewed to determine what offences might, in the circumstances we have suggested, appropriately be dealt with in the juvenile or family court. In addition to the offences listed in paragraph 363, these courts might be given jurisdiction, for example, in certain cases of abduction under sections 235 and 236 of the Criminal Code. We have in mind situations such as youthful elopements and abduction by a parent who has lost the legal right to custody. Moreover, with the increasing tendency in Canada to establish family courts, it may be desirable to assign certain offences to these courts quite apart from any child being involved at all. An example would be proceedings by a spouse under the Criminal Code to have the other spouse bound over to keep the peace. (52).
- (5) The juvenile or family court should have the

power to dispose of appropriate cases by entering an order for the absolute or conditional discharge of an offender. Whatever may be said of the absolute or conditional discharge as part of a general system of sentencing, we think that such methods of disposition are particularly suitable in dealing with many offences committed by one member of a family or household against another. We would also suggest that, in connection with any amendment to the law authorizing the conditional discharge of offenders, consideration should be given to incorporating specific statutory conditions along the lines that we have previously noted. (53).

374. In addition to the proposals outlined above, we recommend that the system adopted in the State of New York be studied with a view to assessing its suitability for introduction into Canada. We recognize that a legislative scheme of this kind cannot be implemented by federal legislation alone. Presumably it would be necessary for the Attorney General of Canada to take up with the appropriate provincial authorities the question as to whether the Criminal Code should be amended so as to permit any province that chooses to do so to adopt a procedure designed to keep problems of family relationships out of the criminal courts. A province may, for example, wish to require a period of delay before criminal proceedings can be instituted by one member of a family against another in order that there can be sufficient time for informal adjustment or procedures of a civil nature to have their effect. Having regard to the constitutional difficulties that are involved and to the fact that little is known as yet concerning the effectiveness of the New York system, we have contented ourselves with recommending that this matter receive study as part of the development of criminal law policy in Canada.

#### Footnotes

1. Juvenile Delinquents Act, s.22(1).
2. Criminal Code, s.157(1).
3. Children and Young Persons Act, 1933, 23 & 24 Geo.5, c.12, s.55(1); Children and Young Persons (Scotland) Act, 1937, 1 Edw.8 and 1 Geo.6, c.37, s.59.
4. See National Council on Crime and Delinquency, Standard Juvenile Court Act (6th ed., 1959), s.11 and comment, pp.28-29; American Law Institute, Model Penal Code (Tent. Draft No.9, 1959), art.207.13 and comment, pp.182-187, and (Proposed Official Draft, 1962),

s.230.4, p.192.

5. Tappan, Juvenile Delinquency (1949), p.497.
6. Rubin, Crime and Juvenile Delinquency (1958), p.42.
7. Kilbrandon Committee, para. 18, p.14.
8. Ibid., paras.19 and 35, pp. 14 and 20. The Kilbrandon Committee also observed: "Under the guise of promoting the welfare of children, such proposals appear to be in risk of ending in the application of coercive measures against the parents on the basis of a somewhat vaguely-defined aim of improving the quality of family life; and of assuming a prescriptive right not merely to prevent juvenile delinquency but to improve, by direct coercive measures, adult people - on the footing that there is a duty in the State to promote universal happiness among its citizens." Ibid., para.20, p.15. That such provisions have a tendency toward this result would seem to be borne out by a number of reported cases on section 33 of the Juvenile Delinquents Act (contributing to delinquency) and section 157 of the Criminal Code (corrupting children). See, e.g., In re Strom (1930) 1 W.W.R. 878, 53 C.C.C. 224; Rex v. Vahey, (1932) 3 D.L.R. 95, 57 C.C.C.378; Rex v. Eastman (1932) O.R.407, 58 C.C.C.218; Dionne v. Pepin, (1934), 72 C.S.393; Regina v. Bloomstrand, (1952) 6 W.W.R. (N.S.) 680, 15 C.R.249; Regina v. Poirier, (1953) C.S.406.
9. See, for example, Alexander, "What's This about Punishing Parents?," (1948) 12 Federal Probation 23; Glueck, The Problem of Delinquency (1959), c.30; Robbins and Robbins, "Should We Punish Parents of Delinquent Children?," Redbook (May, 1956), p.2; Rubin, op. cit. supra note 6, at pp. 33-42; Tappan, op. cit. supra note 5, at pp. 497-498.
10. Robbins and Robbins, supra note 9, at p.7.
11. See, for example, Voelcker, "Juvenile Courts: The Parents' Point of View," (1960-61) 1 British Journal of Criminology 154.
12. Studt, "The Client's Image of the Juvenile Court," in Justice for the Child (Rosenheim ed., 1962), at p.211.
13. Ibid., at p. 213.
14. "No order shall be made under this section without giving the parent or guardian an opportunity to be heard, but a parent or guardian who has been duly served with notice of the hearing pursuant to section 10 shall be deemed to have had such opportunity,



notwithstanding the fact that he has failed to attend the hearing." Juvenile Delinquents Act, s. 22(4). But see Lysenko v. Cooper, (1938) 1 W.W.R. 366.

15. Juvenile Delinquents Act, s. 22(2).
16. Standard Juvenile Court Act, s.23, p. 56.
17. Ibid.
18. See supra paras. 255-256.
19. See Civil Code of the Province of Quebec, art. 1054.
20. See Fleming, The Law of Torts (1957), pp. 167-168 and 703-704.
21. Kilbrandon Committee, para. 33, p. 19.
22. See supra paras. 297-299.
23. American Law Institute, Model Penal Code (Tent. Draft No.9, 1959), pp. 182-183.
24. See Lou, Juvenile Courts in the United States (1927), p.22; Chute, "Fifty Years of the Juvenile Court," in Current Approaches to Delinquency (National Probation Association Yearbook, 1949) p. 1, at p.5.
25. See generally Scott, The Juvenile Court in Law (3rd ed., 1941), pp.27-33; Geis, "Contributing to Delinquency, (1963)8 St. Louis University Law Journal 59.
26. State v. McKinley, (1949) 35 N. Mex.106, 202 P. 2d. 964.
27. See Criminal Code, ss.450 and 468.
28. See Rex v. Christakos, (1946) 1 W.W.R. 166 per McPherson, C.J.M., at p. 168, 87 C.C.C. 40, at p.41; Rex v. Miller, (1944) 1 W.W.R. 415, 81 C.C.C. 110. See also Rex v. Linda, (1924) 2 W.W.R. 835, 42 C.C.C. 110.
29. See, for example, Regina v. Cortner, (1961) 35 W.W.R. (N.S.) 187, 130 C.C.C. 292. An anomalous situation exists in Alberta, where the juvenile age is eighteen for girls and sixteen for boys. It sometimes happens, we are told, that a charge of contributing to delinquency is brought against a youth because of his relationship with a girl of about the same age as himself, or possibly even older.

Such charges are often laid at the insistence of the parents of the girl, even against the advice of the police. Of interest in this connection is the position adopted in the Model Penal Code, which restricts the definition of less serious kinds of sexual assault and exploitation to cases where "the other person . . . (i.e., the victim) . . . is less than (16) years old and the actor is at least (4) years older than the other person." American Law Institute, Model Penal Code (Proposed Official Draft, 1962), ss.213.3 and 213.4.

30. Rex v. Christakos, (1946) 1 W.W.R. 166, at pp.167 and 171; 87 C.C.C. 40, at pp.41 and 45.
31. Juvenile Delinquents Act, s.33(4).
32. Rex v. Hamlin, (1939) 1 W.W.R. 702 per Manson, J., at p.704, 72 C.C.C. 142, at p.144. See also Rex v. Marr, (1944) 1 W.W.R. 345, 81 C.C.C. 238; Rex v. Van Balkem, (1944) 1 W.W.R. 347.
33. See, for example, Regina v. Cortner, (1961) 35 W.W.R. (N.S.) 187, 130 C.C.C. 292; Rex v. MacDonald, (1936) 3 D.L.R. 446, 66 C.C.C. 230. See also Regina v. Cairns, (1960) 128 C.C.C. 188.
34. State v. Crary (1959) 10 Ohio Op. 36, per Alexander, J., at p.38, 155 N.E. 2d. 262, at p.264.
35. See, for example, Regina v. Poirier, (1953) C.S. 406. While the reported cases indicate that charges of this kind are regularly dismissed, it is notable that this is usually on appeal from conviction by a juvenile court judge or magistrate. We have no way of knowing how frequently such charges are brought and how often pleas of guilty are entered and accepted. Rather more information concerning the use that is made of the contributing provisions is available in the United States, although here too the matter appears to have received surprisingly little study. See generally, Geis, supra note 25; Foster and Freed, "Offenses Against the Family," in Symposium - American Papers for the Congress of the International Association of Penal Law (1964), in (1964) 32 Kansas City Law Review 1, at pp.78-85.
36. This conclusion is confirmed by data compiled in New York City. See Ploscowe, Sex and the Law (1962), pp.207-208.
37. Indeed, the Juvenile Delinquents Act already contains a provision conferring jurisdiction upon the juvenile court over Criminal Code offences committed by adults in certain cases, Section 35 provides, in part: "Prosecutions against adults for offences against any provisions of the Criminal Code in respect of a child may be brought

in the Juvenile Court .....". It has been held that, by reason of this provision, a juvenile court judge has jurisdiction to try an adult charged with an offence against what is now section 157 of the Criminal Code. Rex v. Ducker, (1919) 45 O.L.R. 466, 31 C.C.C. 357. It is perhaps worth noting, however, that much uncertainty has been expressed concerning the precise effect of section 35. Section 35 goes on to provide that prosecution may be brought in the juvenile court "without the necessity of a preliminary hearing before a justice, and may be summarily disposed of where the offence is triable summarily, or otherwise dealt with as in the case of a preliminary hearing before a justice." Failing some more elaborate revision of the law, there would appear to be merit in the suggestion that section 35 should be re-written so as to clarify its meaning.

38. We think it useful in this connection to quote the following comments of the Counsel for the National Council on Crime and Delinquency in the United States: "The use of the statutes defining the crime of contributing to delinquency is spotty. Whether it is used or not depends on the policy of a particular place at a particular time. Either these statutes make good sense and ought to be used, or they ought to be taken out of the laws to avoid their abuse .... But are there not some exceptional cases where the statute might be used? Perhaps. One answer to such a defense of the law is that it is a peculiar kind of penal law that is used only when it is convenient. We think of crimes as acts that should be suppressed and punished consistently and equally .... Probably one reason why the laws are not on their way out is that they are enforced only sporadically. If they were persistently enforced their unjustified harshness would convince many that the laws should be repealed." Rubin, op. cit. supra note 6, at pp. 39-41.
39. In view of our recommendation that the offence of contributing to delinquency be abolished, we find it unnecessary to comment in any detail on suggestions that have been made for amendments to section 33. It may be useful, however, to take note of the more important of these suggestions. One proposal is that section 33 be amended to provide that it shall not be a defence to a charge of contributing to delinquency that an accused did not know that the child was under the juvenile age. This proposal follows a decision of the Supreme Court of Canada disapproving a number of earlier lower court decisions and holding that such a defence is open to an accused. Régina v. Rees; Régina v. Angiers, (1956) S.C.R. 640. We could not concur in the change proposed. Cf., American Law Institute, Model Penal Code (Proposed Official Draft, 1962) s. 213; Sexual Offences Act, 1956, 4 and 5 Eliz. 2, c. 69, s. 6(3). We take a more favourable view of two other proposals:



(a) that the offence of contributing to delinquency be transferred to the Criminal Code; and (b) that liability to conviction for contributing to delinquency be confined to adults only, or at least to cases where there is a substantial age difference between the accused and the child affected. As we have indicated, however, we think it preferable that the offence of contributing to delinquency be abolished altogether.

40. Rex v. Vahey, (1932) 3 D.L.R. 95, 57 C.C.C. 378; Rex v. Eastman, (1932) O.R. 407, 58 C.C.C. 218; Regina v. Turgeon, (1957) Que. Q.B.796.
41. Criminal Code, s.157(4).
42. Canadian Corrections Association, The Child Offender and the Law (1962) p.16.
43. Ingleby Committee, para.178, p.60.
44. Ibid., para.179, p. 60.
45. U.S. Dept. of Health, Education and Welfare, Children's Bureau, Standards for Specialized Courts Dealing with Children (1954), pp.33-35; Standard Juvenile Court Act, s.11 and comment, pp.28-29.
46. Standards for Specialized Courts Dealing with Children, pp.33-34.
47. See Oughterson, "Family Court Jurisdiction," (1963) 12 Buffalo Law Review 467, at pp.491-494; Paulsen, "The New York Family Court Act," (1963) 12 Buffalo Law Review 420, pp.430-431.
48. New York Family Court Act, N.Y. Sess. Laws 1962, c.686 as amended, art.812.
49. Presumably this does not include more serious cases where the offence amounts to a felony. The powers that the Legislature may confer upon the Family Court are restricted by the New York Constitution. The constitutional provision authorizes Family Court jurisdiction over "crimes and offenses, except felonies, by or against children or between spouses or between parent and child or between members of the same family or household." New York Constitution, art.VI, s.13(b).
50. Oughterson, supra note 47, at p.487.
51. Standard Juvenile Court Act, s.11.

- 52. Criminal Code, s. 717.
- 53. See supra para. 371.

## PART V PREVENTION

### CHAPTER XI

#### Introduction

375. Throughout this Report we have been concerned primarily with the "control" features of a juvenile delinquency program - that is, with the legal and correctional framework and with the various ways in which the juvenile court process can come to bear upon the juvenile offender. Equally important, however, are measures aimed at the "prevention" of delinquency. Too seldom is sufficient attention given to both "control" and "prevention" as complementary components of an integrated approach to the problem of delinquency. It is necessary, of course, that the community concern itself with remedial or control measures after the fact. Citizens must be protected by adequate law enforcement and correctional treatment programs against repeated violations of the law by children and young persons. Moreover, measures that induce a young person to become law-abiding are themselves a form of prevention in that they reduce the likelihood of subsequent misbehaviour. At the same time, it is important to recognize that efforts limited solely to the control and rehabilitation of persons found delinquent do not reach the basic sources of the problem. There must be a parallel emphasis upon what are commonly called "primary" and "secondary", as apposed to "tertiary", measures of prevention. (1). There must, in other words, be a substantial investment of our knowledge and resources - and, indeed, of our imagination - as part of a broad attack on those aspects of family and community life that tend to have as their eventual outcome adolescent rebellion or drift.

376. At the outset we wish to make one point clear. It is impossible to eliminate delinquency, just as it is impossible to eliminate crime. Delinquency and crime, like other expressions of social pathology, often reflect current and even accepted patterns of community life. In essence they are a by-product, avoidable only in part, of our social structure itself. Moreover, there will always be those who will engage in prohibited activities for the very reason that such activities are not permitted. Society can, of course, define and respond to anti-social behaviour in different ways. It may, through the formal agencies of control, permit a wide or a narrow range of anti-social behaviour. The realistic goal is to attempt to reduce the incidence of delinquency in a manner consistent with the other values for which mankind is joined in organized society.

377. In this Chapter we are concerned with the "prevention" component of any organized attack on the problem of juvenile delinquency. As will perhaps already be evident, the term "prevention" has been given a number of different meanings when applied to programs designed to combat delinquency.



The most frequently quoted statement of the difficulty in isolating the meaning of "prevention" appears in a publication prepared for the United States Children's Bureau by Witmer and Tufts, entitled *The Effectiveness of Delinquency Prevention Programs*. (2). The authors observe:

" Despite the attractiveness of the idea,  
delinquency prevention is an elusive concept ....

.....

To some, delinquency prevention is practically synonymous with the promotion of the healthy personality development of all children. Since delinquency, say these people, is attributable to poor parent-child relations, inadequate social values and inadequate training in social values, prejudice and discrimination against minority groups, adverse economic conditions, inadequacies in staff and equipment for schooling, recreation, medical care, religious training, and so on, marked reduction in delinquency can be expected only if great changes are made along all these lines. ....Proponents of this viewpoint would seek to prevent or reduce delinquency by improving all aspects of .... life that bear closely upon the personality development of children and all services that are provided in children's behalf ....

.....

To other students and planners of programs, delinquency prevention means reaching potential delinquents before they get into trouble. To them the global approach just described, or even segments of it, would seem too roundabout. .... The children who are likely to become delinquent may be identified by predictive tests, say some proponents of this viewpoint. Alternatively, it is proposed that children be selected by, say, their teachers on the basis of peculiar or obstreperous conduct that is believed to foreshadow delinquency, or perhaps on the basis of markedly adverse home conditions. This approach to delinquency prevention is distinguished from the one just described not only by its limited clientele but also by the character of the activities undertaken. The emphasis here is on

direct services to children and (sometimes) their parents instead of on measures aimed at improving environmental conditions ....

.....

A third conception of prevention stresses reducing recidivism and lessening the likelihood of serious offenses rather than reaching children who have not yet offended against the law. What is chiefly to be prevented, in this view of the problem, is the aggravation of delinquent behavior, its continuance rather than its onset. Programs operated on this basis accordingly deal largely with youngsters who engage in behavior that is illegal and that may already have led to court action.

.....

The kinds of programs that have been established to reduce delinquency among children who already clearly show delinquent tendencies vary widely. Some provide psychiatric or social treatment. Some concentrate their attention on delinquent gangs and seek to redirect their interests and activities. In some the parents are the focus of service; in some only the delinquent receives attention." (3).

378. Although there has been much talk about prevention, there has been little objective research into the effectiveness of various types of preventive programs. In the words of a recent American review of current knowledge in the field, "our theoretic understanding remains speculative, empirically unsubstantiated, and composed of an aggregate of contradicting, unrelated, and disputing segments." (4). Clearly it is beyond the scope of this Report to undertake a study in depth of the many-sided problem of prevention. We content ourselves with making a very limited survey of the relevant areas of inquiry and with suggesting what seem to us to be the most promising directions for future action. In doing so, we rely heavily on the experience of others more knowledgeable in these matters than ourselves. It is our hope that a more detailed examination will follow as part of a systematic and studied attempt to devise programs in Canada designed to meet the need for more intensive and organized concentration on measures of primary and secondary prevention. Programs of the kind that might be expected to have a significant impact on the problems of delinquency will almost certainly require both changes in existing practices at the community level and substantial expenditures of

money. Governmental support will doubtless be necessary if such programs are to be developed. It is obvious, of course, that the matter of legislative action by the federal government in the field of prevention raises constitutional issues of major importance - issues that extend well beyond the interpretation of the criminal law power assigned to the federal authority under the Canadian constitutional system. We make no attempt to define or resolve these issues here. While we do make certain specific suggestions concerning possible federal action, we leave to those responsible for the formulation of policy the task of assessing the proper limits of federal activity in the field of delinquency prevention. We would only add that, having regard to the nature of the problems involved and to the need to develop a tested body of knowledge and experience that can be made available to communities throughout Canada, it is our opinion that the case for some form of federal participation in this area is a very strong one.

### The Home

379           If there was a common theme running through the submissions presented to the Committee, it was the emphasis placed upon the importance of family life in the prevention of delinquency. In the development of a healthy personality the child needs parents who are willing to love him, parents who can set both realistic goals and limitations for the child and offer support and encouragement to the child in meeting these expectations. Given this proper family environment, the child is more readily able to achieve a sense of self-worth and emotional security. Failing this kind of support, the anxiety and alienation that he experiences may be such as to contribute substantially to later emotional disturbance or anti-social behaviour. Some theoretical approaches go further. Thus it is said by some authorities on child psychology, for example, that the pattern of the emotional interrelations with those close to the young, which is formed in the earliest period of life, continues throughout adult life, not merely in a general way but very specifically and precisely in its major features and often even in detail. Whatever position one takes among the many theories of personality development that can be found in the literature (5) - and the literature is both enormous and complex - one fact is apparent. Not all children in our society are fortunate enough to have parents with the characteristics and abilities that are basic to establishing a suitable family environment. The parents may be mentally ill, or alcoholic, or ignorant of good child-rearing practices. One or both of the parents may die while the child is very young. Economic pressures may force the mother to work and leave her child with inadequate parental care. While many children overcome such disadvantages, situations of this kind place children "at risk".

380.           Society cannot bring the dead back to life, but it can do much to ensure that the detrimental effect of the lack of adequate parental care is minimized. Where the parental inadequacy is related to ignorance the solution is educational measures. Principles of good mental health should be presented to prospective parents as well as to persons who already have children. (6).



For some time well-baby clinics have been in operation. It is hoped that in these clinics it is realized that a concern for the mental health of the child is as much a concern of public health as is the concern for the child's physical health. A knowledge of mental health principles and a willingness to apply them is insufficient by itself. The parents must be free from the kind of apathy or anxiety produced by chronic unemployment and long-term poverty. Measures that enhance the economic security of the family, even though not introduced primarily for their mental health effects, can nevertheless have this further beneficial result.

381. Society's general attitude toward inadequate parents tends to be critical and punishing. There is no deeply rooted and broadly held conviction that inadequate parents should be helped. The prevailing choice of action is to punish the parents and to remove the children. Undoubtedly in many instances such removal is necessary, But too often it is the easy solution readily masked as "doing something for the children". What would be preferable in a large number of cases is community effort to sustain inadequate parents until they become self-sufficient. A complete range of co-ordinated welfare services, adequately staffed and financed, is needed, not only to achieve the foregoing, but also to provide for children whose parents' inadequacy cannot be remedied.

382. A particular source of concern to students of social welfare has been the so-called "multi-problem family". One submission explains: "Social research during the past decade has established the fact that within our North American society there is a hard-core of families - approximately 6% of all urban families - who are suffering from such a compounding of serious problems that they are absorbing over 50% of the combined services of the community's dependence, health and adjustment agencies. In many of these families, where destructive forces move continuously to reinforce each other, the pathology has existed for two or more generations." (7). Such chronically dependent family groups contribute substantially to the crime and delinquency statistics of every large-sized community. In recent years a number of communities in North America, Europe and Australia have attempted to develop integrated programs designed to cope with the problem presented by these hard-to-reach, disorganized families. Some persons concerned with delinquency prevention have regarded the "multi-problem family" approach as a major step forward in the search for a means of attacking the very roots of crime; others have expressed doubts as to whether programs organized around the provision of services and based upon existing agency structures really address themselves to the fundamental causes of anti-social behaviour. While our own inclination is to accept the latter view, we make no attempt to arbitrate in any conclusive way between these conflicting assessments. It seems to us that progress in the field of delinquency prevention is most likely to occur where experimentation is encouraged along a number of promising lines. We do not know whether there is a need in Canada for a demonstration project in the area of "multi-problem family" research. Some work along these lines has already been undertaken. (8). We do

suggest, however, that the desirability of some such project, incorporating carefully defined techniques for the evaluation of results, should be considered in connection with any program that is developed for examining alternative approaches to delinquency prevention.

383. We should not leave this discussion of the role of the family in delinquency prevention without recording the fact that this past generation has witnessed profound changes in the nature and quality of family life. In a relatively short period of time, North American society has passed from a pre-dominantly rural stage of its development to an essentially urban way of life. Social and cultural change has proceeded with unprecedented rapidity, affecting almost every aspect of social experience. We need but note the pervasive influence of the media of mass communication, the development of a highly mobile population aided by modern means of transportation, and disintegration of many of the traditional patterns of community living. Like every other social institution - and probably more than most - the family has felt the impact of these changes. As one submission observes: "Two world wars and a revolution in mores and codes of behavior have left many adults and growing children uncertain as to what now constitute specific guides to conduct. It stands to reason that families in which successful relationships have failed to develop, where stability is lacking, and guide-lines of behavior not established, will produce children ill-equipped indeed to withstand the impact and seduction of adverse influences in the world at large." (9). It seems evident, then, that the problems of contemporary family living are a legitimate and important object for serious study. Indeed, the author of the 1950 Hamlyn Lectures has suggested: "The task before us - it is really part of our defence of western civilization - is to rebuild the family on new and firmer foundations." (10). Efforts to promote the study of the family should, in the Committee's view, receive every possible support.

### The Church

384. Professor Tappan has observed: "The actual role of contemporary religion in delinquency prevention is not easy to evaluate. Its potential role is tremendous, but the fulfilment of that potential depends on the vitality of a religion in the lives of its professants. .... Excepting in so far as doctrinal norms are fused into the general culture, religion can play no great role in man's life unless it is vitally conditioned in his intellectual and emotional processes. This requires more, obviously, than membership in a church or even than attendance - sporadic or faithful - at its services." (11).

385. The specific contribution that the Church can make to delinquency prevention has been well stated by the authors of one publication in the following terms:

" The Church can reinforce the family's role in helping a child achieve personal and social

integrity. It can guide youth in arriving at a scale of values in keeping with democratic living - values that emphasize the dignity and worth of the individual and the equality and brotherhood of all people. It can transmit to youth the enduring ideals of civilization.

Adolescence is a time when children begin to tussle with problems about themselves and their place in the universe. The Church can give them spiritual faith and confidence in a rational order and an appreciation of the ultimate truths that transcend the immediate confusion. It can help youth understand the issues now at stake and can imbue them with a sense of responsibility as citizens of the world.

To give spiritual guidance--this is the primary role of the church. As one of the community forces influencing children, the church can also contribute concretely to the prevention of delinquency. To do so its leaders must take an active interest in community life. They must be aware of conditions in their neighbourhood that make for delinquency and take steps to eliminate them. They can arouse public concern for community problems and spur church members into doing something about them. They can co-operate with other agencies and neighbourhood groups to make the community a better place to live in.

Church buildings can serve as community centres with recreational programs so varied and attractive that children will be eager to come. These programs might include discussion groups in which older boys and girls could thrash out their ideas, doubts, and beliefs. Ideals are moulded by the personalities we admire. Group leaders in church activities, therefore, should be the kind of men and women who understand young people and arouse their respect and admiration." (12).

386. The Committee has been impressed by the contribution that Church leaders have made in a number of communities to efforts at delinquency prevention. We are told that this contribution can be made still more effective if the



work of the Church in this field is co-ordinated to a greater extent with other aspects of community planning. In the words of one submission, "mutual interaction between casework, group work, and pastoral counseling will enhance mutual understanding and respect, and lead to most effective collaboration toward prevention." (13).

### The School

387. We can perhaps best introduce our comments on the role of the school in delinquency prevention by setting out the text of a statement presented to a committee of the United States Senate by Dr. William C. Kvaraceus, Director of the Juvenile Delinquency Project of the National Education Association. In a most useful summary of the position and responsibility of the school system in relation to juvenile delinquency, Dr. Kvaraceus states:

" In mobilizing community forces for prevention and control of juvenile delinquency, the social planner intuitively looks to the school as a major - if not central - resource. For the schools have all the children of all the people; they receive the child early and maintain a close and intimate relationship; they have trained personnel to deal with children and youth; they aim to develop integrated and socially effective citizens; and they are found in every community.

The temptation is ever present to make of the school an omnibus agency in order to serve any community endeavor. The school, as one agency, cannot hope to be everything unto every child. The school is not a hospital ; it is not a clinic ; it is not a community convenience for disturbed or disturbing children and youth ; nor is it an adolescent ghetto. The unique and special role of the school is to be found in its teaching-learning function. Without deflecting from this unique and special function and recognizing the fact that most of the delinquents' difficulties stem from forces and antecedents outside the school, just what can be expected of the school staff in community programs aimed at curbing delinquency?

The 'good school' will make its optimum contribution only by becoming a 'better school'. The following practices will identify the better school with particular reference to those adaptations

which can relate directly or indirectly to the prevention and control of norm violations. There is some evidence that poor schools - schools who do not show these adaptations - may aggravate, if not cause, delinquent behavior.

1. There must always be visible a positive and diagnostic attitude toward the misbehaving child. However, many schools show a hostile, if not punitive-retaliatory mood. Many schools caught in the press of the educational critics demanding more and better mathematicians, scientists, and linguists appear more than willing to sell any reluctant or recalcitrant learner down the river to preserve the academic reputation of the school. Instead of a helping hand the school too often shows the back of its hand.
2. There must be greater differentiation of instruction. School objectives must be stated and evaluation of the school's program should be made in terms of development of new and desirable behaviors or the modification of old and undesirable behaviors. If schools can modify the behavior of large masses of children thereby changing the culture (the way of life), they may ultimately live up to their potential function as change agents. In differentiating the curriculum, attention must be given to the current monolithic structure of the upper-middle-class curriculum. Attention needs to be given to the development of a meaningful curriculum for the lower-class youngster for whom middle-class goals do not represent reasonable and realistic goals. The core of this revision should center around the communication skills, leisure-time use, and occupational competencies.
3. Attention must be directed to improving the subliminal or covert curriculum as found in the culture and subculture of the school. This is the way of life that sets up norms telling the youngster how to act and how not to act. Like the lower part of the iceberg, this hidden curriculum often provides more

effective learning experiences than are forthcoming from the visible curriculum.

4. The surrogate role of the teacher must be maximized. Who wants to be like the teacher? Many teachers do, and more should, serve as imitative examples through the development of strong interpersonal relationships. With the threat of oversized classrooms, teaching machines, and listless mentors, anonymity, impersonality, and boredom can combine to emit a school dropout if not a delinquent.
5. The school must procure and maintain certain special and essential services. The teacher's time and competencies are limited. She needs the help of the school nurse, school doctor, counselor, psychologist, caseworker. To the usual array of services we need to add those of a social analyst.
6. Early identification of pupils vulnerable or exposed to the development of delinquent behavior can be carried on in the school agency. Nothing predicts behavior like behavior. The pupil in his day-to-day behavior will give much evidence of the direction of his growth patterns. Early detection and referral of youngsters who give evidence of the need of help can result in prevention.
7. The school must improve its partnership role within the total community complex of health and welfare agencies. The school cannot remain an isolated agency. It must coordinate its efforts with those of other youth and family welfare and recreation agencies." (14).

388. The school has been called the second line of social defence in the prevention of delinquency, the first being the home. One submission received by the Committee observes that "the recent trend in our culture today for community agencies to assume more and more of what had been the responsibilities of the home, suggests that the school will continue to play an increasingly important role in the development of habits, attitudes and values of our young people." (15). On the other hand, the school must guard against assuming responsibility beyond its proper function and competence. Professor Tappan argues that "the community and often educators themselves are sometimes addicted to quite unrealistic extension and elaboration of the teacher's functions



in loading upon the school burden after burden that some other social institution is attempting to avoid." (16). The essential task of the school system has been described in terms of two "dimensions of responsibility". (17). One dimension is that of building into the lives of all of its pupils the knowledge, skills and attitudes that make for mature citizenship in a free society. The other dimension is that of early identification of, and special attention to, those children who for one reason or another are unable to make satisfactory progress in acquiring the knowledge, skills and attitudes that are required. The role of the school as an instrument for the prevention of delinquency can perhaps best be defined by reference to these recognized dimensions of concern.

389. Individuals differ from each other in a variety of ways and these differences are reflected in the manner in which different children respond to school situations. Some children suffer intense and unrelieved frustration in school because they lack the skills and ability necessary to compete effectively in an undifferentiated program designed for the average child. As studies of the delinquent and the so-called "pre-delinquent" child have repeatedly shown, truancy and low marks are highly correlated with delinquency, and the correlation is higher in areas where the delinquency rates are highest. (18). The National Education Association study points out: "Pouring all students into a single academic mold causes many predelinquents to suffer frustration, failure, and conflict, which, in turn, beget aggression that frequently eventuates in norm-violating behavior. Early school drop-out - a frequent forerunner of delinquency - is also closely related to the failure of the undifferentiated curriculum to stimulate or hold the student whose interests and capacities are not academic." (10). Thus one of the most basic contributions that the school system can make to delinquency prevention is in the provision of a flexible and balanced curriculum suitable to the varying needs of the different kinds of students whose education is the school's clear responsibility. This may require special programs and services of several kinds, having regard to the many reasons why children encounter difficulty in school. The school, for example, may undertake remedial work to assist children with speech defects and those commonly called "under-achievers". It may establish opportunity classes, classes for the physically handicapped, home teaching and hospital classes, and the like. In some communities work experience programs have been developed as a way of giving young persons with low academic potential actual job experience within the context of the school system itself. (20). To quote from a report prepared for the Committee by the Edmonton Public School Board, "research now has demonstrated that the best learning situation is also the best environment for wholesome personality growth." (21). In the fullest sense, therefore, programs such as these serve to advance the goal of equal educational opportunity for all children, regardless of their different interests and capacities.

390. The second major contribution that the school can make to delinquency prevention relates to the detection of potential problem children. A United States Children's Bureau publication observes: "The most important single factor in helping children with behavior problems is to start early, before the problem

has become acute. A great deal can be done for a child in the first stages of his difficulty that is no longer possible by the time his misbehavior has brought him to the attention of the law enforcement agencies." (22). The classroom teacher, who sees the child for an extended period of time and who comes to know him intimately, is in a particularly advantageous position to identify those children who need emotional or psychological support. The sentiment expressed by many persons who met with the Committee can be summed up in the words of one submission which states: "It is felt the alert and knowledgeable school teacher can do a great deal to prevent juvenile delinquency. Surveys have shown that 50 - 70% of juvenile delinquents can be recognized in school before they ever become delinquents." (23).

391. It is sometimes suggested that a thoroughgoing effort at prognostication and prevention should be instituted in the public schools, utilizing in support of such a program certain tests that purport to identify potential delinquents. The most celebrated of these tests is the Glueck Social Prediction Scale. It is clearly beyond the scope of this Report to comment on the merits of particular predictive tests, a matter that has been much debated in the criminological literature in recent years. We do think it important to point out, however, that problems may result from any attempt to predict future delinquency in a public school population in which the great majority of children are not delinquent and are not likely to become offenders. One problem concerns the social utility of applying clinical-preventive facilities to a large part of the school population with a view to identifying a small part of that group that are thought to be potentially delinquent. Another problem relates to "labelling" or "position assignment", a matter that we have considered in another context in examining the use of the term "juvenile delinquent". The argument here is that children who are designated as "pre-delinquent" will tend to become delinquent. What is said, in other words, is that delinquency prediction may become a self-fulfilling prophecy because it has an influence on the child involved and upon the attitude of the authorities who look for the predicted result in the individual child. We find persuasive the view expressed by Professor Tappan:

" The entire gamut of juvenile problems appears in the delinquent population, yet the occurrence of any particular problem or combination of problems does not imply that an individual will become delinquent. Children who display serious maladjustments, whether or not they are headed toward delinquency, require help that is appropriate to their manifest difficulties rather than to their future state. Treatment, then, should be given as a child welfare measure generally, not as a preventive of delinquency." (24).

392. Nevertheless, the teacher does have an important role to play in the prevention of delinquency through the identification of problem children.

As the National Education Association study observes, "through early referral of the delinquency-prone youngster to the appropriate agency, followed by special help and treatment, the school can achieve preventive action in the literal sense of the word." (25). The study goes on to note: "In order to recognize the potential norm violator, the teacher will need to be aware of the tell-tale signs, the indicators, or the hints of the appearance of an adjustment that involves norm-violating behavior." (26). Teachers vary, of course, in the degree of skill and insight which they can bring to bear upon an evaluation of the significance of pupil behaviour. It is perhaps unrealistic to expect most teachers to attain a high degree of proficiency in the performance of such a specialized task. Indeed, the low salaries paid to public school teachers in many parts of Canada make it problematical whether teachers will feel any great incentive to undertake the added burden of concentrating upon the maladjusted child. We think, however, that this aspect of the school's function should receive more attention than it has thus far and that greater emphasis should be placed in teacher training upon pupil evaluation techniques. A visiting teacher program provides another means of making teachers aware of the "telltale signs" of maladjustment.

393. Although teachers may be assigned some primary responsibility for identifying problem children, it is clear that teachers need assistance in this process. Child welfare and attendance officers, school social workers, school psychologists and guidance personnel all have a contribution to make. (27). As a report prepared for the Governor's Special Study Commission on Juvenile Justice in California explains:

" If the schools are to be most effective in the early identification of delinquents, teachers need in-school auxiliary resources to which they can refer those students whom they suspect as being potentially maladjusted, for more specialized study and evaluation by personnel with psychological skills beyond those practised by the usual teacher.

This referral serves two immediate purposes: (1) a degree of assistance to the teacher in validating her own judgments and (2) the possibility of assistance to her in her day-to-day relationships with the pupil.

A third purpose is also evident: if the individual pupil under study appears to require service beyond the scope of the school program, the resulting case study provides the basis for referral to an appropriate agency outside the school. In usual cases, the referral would not be to the outside agency, but would be in the form of a recommendation to the parents concerned, in a private interview session with them." (28).



394. Still another aspect of effective delinquency prevention in the school is the provision of personnel and facilities for intensive work with problem cases. Very few school systems have either guidance clinics or guidance officers with the qualifications necessary for intensive work with more difficult children. There is merit in the suggestion made to the Committee that teachers specialized in psychology or social work should be available in all areas, probably in the ratio of approximately one specialized teacher to every 5,000 pupils. To indicate what may be involved in dealing with problem cases, we quote again from the California report:

" Pupils identified by teachers as being potential problem cases need careful study for the purposes (1) of identifying the causes of the difficulties, and (2) of planning ways in which the school can provide special assistance. Customarily such a study would be made by a health or guidance specialist in cooperation with the teacher and others, such as the school nurse, principal, and parents. Consultation with the parents would be an early step. The study would result, usually, in a case conference involving appropriate staff members at which time decisions would be reached as to the possible ameliorative steps to be tried by the school. ....

As the school works intensively with individual problem cases, the procedures followed must be within the framework of the educational role of the school. The school should not assume a role which is more properly assigned to a therapeutic treatment agency. Certainly there is a fine line of distinction between re-education and therapy, but therapy and treatment per se are beyond the scope of the school's role. .... Perhaps it is sufficient to state that the school's role is best described as more diagnostic than therapeutic, more educational than clinical. ....

Special services and facilities should be developed and maintained to assist the classroom teacher as she works intensively with individual problem cases within the prescribed role of the school. Even in favored communities wherein clinical treatment agencies do exist .... there is need, if the child is to remain in school, for specialized assistance to teachers so that the maximum benefit may accrue to the child during his school attendance. This assistance should be of two kinds. One relates

to the assessment or appraisal of the individual student in terms of his ability to profit from the school situation. . . . The other kind of assistance is related to the specific kinds of activities through which the teacher will try to help the pupil. To be most effective, teachers need the assistance of school psychologists who are also trained in instructional methods and content, who cannot only assess the youngster's educational potential but can also use that insight to help his teacher design an effective program of activities specifically tailored to his needs, as well as to evaluate the progress the child is making. . . . The availability of this kind of assistance especially in the lower grades may well be the most critical factor in the success of the school's efforts in delinquency prevention and control." (29).

395. The nature of delinquency is such that no single institution or service in the community can hope to solve the problem through its own efforts alone. Many children who display behavioural problems in school require the services of other agencies, both public and private. The school, although primarily concerned with the education of the child, has a responsibility to work with these agencies. As many submissions have emphasized, a basic objective of community planning should be to develop to the highest degree possible a co-ordination of activity among agencies providing services for youth. Some of the ways in which the school can participate in a co-ordinated community program are suggested in the National Education Association Study, which states among its "guidelines for action" the following: (1) the school cooperates in collecting, interpreting, and using data relating to delinquency for purposes of prevention and programming; (2) the school helps to develop programs that will aid youth in finding a place in the economic and industrial life of the community and will make a special effort to aid the "hard-to-place" youth; (3) the school participates in planning and carrying out programs of recreation; (4) the school encourages and cooperates with community groups in initiating programs designed to improve parental understanding of normal child growth and development as well as of factors that tend to lead to delinquent behaviour; (5) the school cooperates in evaluating community effort in the prevention and control of delinquency and participates in community committees concerned with the problems of young people. (30). Coordination of services is, of course, not solely directed at delinquency prevention. In the words of one submission received by the Committee: "Co-ordinated programs both within and in cooperation with schools should aim not only at early case spotting and the already developing condition, but at a broad goal of enhanced mental health for all school children, thus enabling them to achieve greater realization of their potential and talents." (31).

396. The Committee was particularly impressed by the contribution to

delinquency prevention that is being made in several Canadian communities by the visiting teacher program. To quote again from Professor Tappan, "the visiting teacher movement holds . . . . promise of a constructive relation between school and home, for it is based upon the key role of individuals who are specifically trained and responsible for liaison, whose acquaintance with both problems of education and of personality should facilitate more accurate diagnosis of problems and better informed efforts at treatment than can reasonably be expected of the ordinary teacher." (32). Visiting teachers are usually selected from among persons having a number of years of teaching experience and on the basis of personal suitability for the work. Specialized courses designed, in part, for the training of visiting teachers are offered by some universities and a leave of absence is arranged by the school to permit the person selected to secure the additional qualifications that the job requires. One way in which the visiting teacher assists in the early detection of problem children is by making parents and other teachers aware of the kinds of "tell-tale signs" of maladjustment that they should be looking for. This is done through staff visits, through talks to Home and School Associations, and even in some cases through a voluntary in-service training program for teachers. The more general functions of the visiting teacher are described by one author as follows:

" The visiting teacher coordinates for the principal the findings of other school personnel within the school: health factors as evaluated by the nurse and health education teacher; intellectual factors as evaluated by the psychologist; classroom progress and behavior as evaluated by the teacher. The visiting teacher obtains an understanding of the child as a whole in his school, home, and community setting, and a knowledge of the factors which have made him as he is. On the basis of her study of the whole child, the visiting teacher plans with the principal and other school personnel to meet this child's growth needs in such a way that the behavior which has occasioned his referral to her may become unnecessary to him, and his healthy personality development be ensured.

Adjustments within the school are effected, such as change of grade placement or modification of program. An interpretation of factors contributing to a maladjustment is made to the teacher in order that she may work out ways of meeting the problem in the classroom. Adjustments within the home are effected through the visiting teacher's conferences with parents. . . . The visiting teacher works closely with resources within the community, calling on health and



psychiatric agencies, recreation groups, child-placement and family-welfare organizations in the interest of the individual child. .... She is in a position to interpret the school to the home and to the community, and to interpret home and community to the school. In addition to effecting the most favorable possible environment for growth in the ways noted above, the visiting teacher attempts through interviews with the child to help him understand and take responsibility for himself." (33).

397. The ways in which the school can help combat delinquency, then, are several. In the Committee's view, every effort should be made to assist the schools in the discharge of those aspects of their work that have a bearing upon delinquency prevention. In particular, we are conscious of the need in many parts of Canada to strengthen pupil personnel services in the schools (i.e., individualized services rendered to pupils, teachers and parents by qualified personnel, such as counsellors, attendance officers, psychologists, visiting teachers and school social workers) and to make more readily available to the schools the services provided by child guidance or mental health clinics. We recommend that the federal government explore with the provincial authorities the extent to which federal assistance might properly be made available in relation to one or more of these strategically important points of attack on the problem of delinquency.

#### Delinquency and Employment Opportunities

398. The interrelationship between school drop-out, unemployment and juvenile delinquency has long been recognized, although this very complex question seems to have received little in the way of systematic or comprehensive study in Canada. One survey conducted in 1962 by the Greater Hamilton Y.M.C.A. found, for example, that among some seventy-five eighteen-year-olds enrolled in the National Survival Course, none of whom were regularly employed, a disproportionately large percentage had been in trouble with the law, both as juveniles and thereafter. (34). While the number of school drop-outs is a matter of legitimate concern from the point of view of delinquency prevention, the problem of the drop-out is really only one part of an issue of much larger proportions, namely, the provision of employment opportunities for a large, disadvantaged segment of our school population. Some of the difficulties involved, as seen from an American perspective, are outlined in the prospectus for the Mobilization for Youth Project in New York City, entitled "A Proposal for the Prevention and Control of Delinquency by Expanding Opportunities":

" The importance of the world of work is self-evident. Gainful employment is the accepted means of attaining monetary rewards in our money-oriented culture: indeed, occupation is the chief determinant

of social status and the principal road to upward mobility. It is through the work role that men feel a connection to their society, from which they derive a sense of well-being. ....

Lower-class youngsters contribute disproportionately to the ranks of the unemployed because they tend to be undereducated and consequently to fall into the lower-status, more vulnerable occupational categories. The percentage of unemployment among unskilled workers is twice as high as among all other job categories; and the percentage among persons with less than a high-school education is nearly double that among high-school graduates, and triple that among persons with some college education. Thus, lower-class youth are members of the 'last to be hired, first to be fired' category. In view of current trends in the employment market -- i.e., increasing automation, heightened training requirements -- this situation can be expected to worsen.

.....

The scarcity of jobs for young people in general, and particularly for lower-class adolescents, suggests a need for radical intervention. Although sensitive vocational counseling and aggressive placement are important means of meeting this condition, they are futile without job opportunities about which to counsel youth and vacancies in which to place them. Given the enormity of the task, job-finding programs in private industry cannot be expected to fill the gap. Although some employers will risk hiring additional young people in response to public appeal, the number of such placements is insignificant in comparison to the need. In view of the persistent marginality of many lower-income youngsters, their lack of marketable skills, their undeveloped academic abilities, and their social immaturity, it is not surprising that this is so. Nor is it feasible or desirable to attempt to place young people in jobs now held by older, more experienced workers. Men with families obviously have priority in the competition for scarce jobs, and the gap between the requirements of the labor force and the number of laborers is growing steadily wider. New jobs therefore must be created for young people, jobs which do not now exist. These new employment opportunities must be

designed to fill some of the many social needs that are now unsatisfied. The increase in leisure time, for example, creates a need for workers in such consumption fields as recreation.

.....

Building bridges to adult careers, making these bridges apparent to youngsters, and clarifying for them where the bridges lead and what is required for the journey require programs whose objective is to increase contact between adults and community institutions, youngsters and adults, and even between various age groups, so that older boys may serve as models for younger ones. Large-scale adult-education programs need to be launched, so that parents may more adequately interpret the environment to their children and may increase their competency to serve as models for youngsters. Lower-class children need particularly to be exposed to people 'one-rung up the ladder', so that routes are visible and perceived as accessible. In addition, the fact that the employment of youth is literally no one's affair needs to be remedied; a single over-all body solely devoted to this area of development is sorely required. Further, school programs closely integrated with the tasks and training requisites of the world of work are crucial." (35).

399, Out-of-school youth often present a particular difficulty in regard to both training and employability because of attitudes that they have acquired as part of their experience in the home, the school and the community. A study conducted by St. Christopher House, a settlement house in Toronto, provides a useful insight into this aspect of the school drop-out problem:

" The two most common reasons for youngsters leaving school were lack of application on the part of the student, and reaching a limit of ability to progress. .... The record of failure and retardation for many drop-outs goes back to Grade 1; lack of interest in the subjects, or, more likely, the way in which they are presented; indifference to homework assignments or could it be lack of a suitable quiet place to do it; discouragement about the whole school business, leading to truancy, lack of respect for discipline and bad teacher-pupil relationships; then - and why not - the fateful decision to quit school.



What is the cause behind these reasons? Are the failures really due to the pupil's lack of ability and is he solely responsible for his lack of interest? .... 'Industry' - a Canadian Manufacturers' Association publication - discussing the drop-out problem under the heading 'Wasted Assets' quotes from a U.S. Labor Department Report "School and Early Employment Experience of Youth":

'Much more common (reasons for leaving school) were dissatisfaction or boredom with school or teacher or both. This may be taken by some as indicating a low IQ but while this was indeed often the case, the record shows that many of the early leavers had IQ's that were just as high as those who remained to continue their education.'

.....

Approximately one-third of our young drop-outs frankly admitted their inability to co-operate with the school authorities in such matters as attendance, discipline and pupil-teacher relationships. .... Non co-operation follows logically, almost inevitably, upon the two other reasons - lack of interest and lack of ability to progress. It is the first symptom of trouble ahead, but, unfortunately it is not recognized it would seem, or if it is, nothing constructive is done about it in most cases, in Toronto, or elsewhere. ....

.....

We were appalled to find that the attitude of casualness and indifference in school had carried over from school to employment. .... Twenty-two, almost half of the group, had either not given the question of employment any thought or had done so only in terms of unskilled labour. .... They were resigned it would appear at this critical point in their lives to poor wages and poor advancement opportunities. Only ten youngsters out of the fifty involved had given any thought to their future by expressing their desire to secure an apprenticeship or further training. ....

.....

Of course the school drop-outs face job seeking with many adjustment problems. They are likely to have poor school records and no credentials to testify to their skill. They badly need guidance and support in their first ventures in job seeking. .... We found, for example, that those who came to us for help in seeking their first job just couldn't seem to keep appointments and in several instances a staff member had to accompany them to the prospective employer. They seemed to face an interview with dread and were resigned to not getting the job even though the job they were seeking was an unskilled one and the possibility of an intensive interview was slight. "(36).

400. During the past decade the segment of the Canadian population between the ages of fourteen and nineteen has been increasing at a rate considerably in excess of that for the Canadian population as a whole. It is noteworthy that from 1945 to 1954 Canada's birth rate was significantly higher than that of most industrial countries in the western world, being some 27.4 births per 1,000 of population in comparison with a rate of 24.0 for the United States, 19.9 for France, 19.8 for Italy and 17.1 for the United Kingdom. The Economic Council of Canada has forecast that in the coming decade the Canadian labour force will grow at a rate faster than that of any other industrially advanced country in the west. During the 1954 to 1964 period, the rate of unemployment among the age group from fourteen to nineteen increased steadily, reaching a peak of 13.2 per cent in 1961. While this percentage has decreased somewhat since 1961 - it stood at 10.3 per cent in 1964 - the rate of unemployment among persons in this vulnerable age range is still twice the rate for all other age groups combined and about three times the rate for persons between the ages of thirty-five and fifty-four.

401. It is common knowledge that rapid changes are taking place in the Canadian economy, the product of such factors as increased mechanization, the accelerated application of new scientific knowledge to industry, greater use of modern industrial management techniques and the increasing sophistication of the economy generally. In consequence of these changes, an ever-increasing part of the labour force will need to be highly trained. Proportionately fewer semi-skilled and unskilled jobs will be available, a situation that represents an almost complete reversal of the state of affairs that has prevailed throughout most of the history of our country. A recent survey indicates, for example, that approximately 69 per cent of all jobs are now in professional, technical and other skilled categories. The impact of these changes is already being felt by new entrants into the labour market, and in particular by the school drop-out. In one study it was shown that the rate of unemployment was over six times greater among those who did not complete primary school than among those who completed secondary school. Some 35 per cent of the Canadian school population leave school at or before reaching the grade eight level, and about 70 per cent leave before

completing junior matriculation. When viewed in terms of population projections, the dimensions of the problem are apparent. So dramatic are its implications that the words "social dynamite" have come to be used in discussions concerning unemployed out-of-school youth. (37).

402. The United States has responded to the challenge of jobless youth by establishing at the federal level a program for the employment and training of large numbers of young persons between the ages of sixteen and twenty-one in conservation and public service work. The Youth Employment Opportunities Act of 1963 provides for the establishment of two programs. One is a Youth Conservation Corps, a concept inspired by the success of the Civilian Conservation Corps during the depression years. The object of this program is to provide healthful outdoor work of a highly constructive nature for out-of-school and unemployed youth. Enrollees receive a salary, together with board and lodging. Training and other basic educational opportunities are offered after work periods through arrangements made with local school authorities. The second program involves the application of federal funds to the payment on a 50-50 matching basis of the wages of young persons employed by local public or private non-profit agencies in connection with certain kinds of work that are not being performed by regular employees. The kinds of employment authorized include service in hospitals, schools, libraries, settlement houses, children's homes and welfare agencies, as well as work in relation to park improvement, recreation and the like. A National Advisory Council on Public Employment of Youth acts as a clearing-house for public service employment grants. The aim of this second program is to provide young persons with work that will increase both their employability and their awareness of career opportunities, that will not result in the displacement of regular employees, and that will contribute services that would not otherwise be available.

403. It is too early to evaluate the success of these programs. Nor is it by any means clear that the nature of the problem of youthful unemployment in Canada is such as to call for a similar kind of official response. However, we do think that these programs are of sufficient interest and importance to justify a reference to them in this Report, having regard to their implications for delinquency prevention. Indeed, it seems to us that such programs have a value over and above delinquency prevention and employment opportunity in that they can serve as a unique form of recognition of the contribution that youth can make to the development of our country. Thus in both a symbolic and a practical way they can emphasize that adolescence need not be, in words quoted previously, a "psychosocial no man's land". (38). We suggest, therefore, that these American experiments be studied with a view to considering the adoption of similar programs in Canada.

404. The Committee has been impressed by efforts that special services officers of the National Employment Service are making in many communities to cope with the ever-growing problem of school drop-out and youthful unemployment. On the invitation of local school authorities, these officers visit the schools



in an attempt to stimulate student interest in job planning and to assist students in developing a better appreciation of their abilities, interests and ambitions as these are related to employment opportunities. An employment counselling and testing service is provided. Special services officers also work in close conjunction with school guidance staff with a view to discouraging young persons from leaving school in cases where additional schooling would appear to be beneficial. We have been told in several communities that this co-operative effort has been responsible for sending a considerable number of intended drop-outs back to school. There have been recommendations that the services offered to youth by the National Employment Service should be expanded. We endorse these recommendations.

405. Still more is required. As the Special Committee of the Senate on Manpower and Employment has observed: "We must prepare people for a world of work that is continually in evolution." (39). Many students require education and training of a kind that is more closely related to the types of work that are going to be available to them. There would appear to be a need for expansion of work experience programs within the schools - programs that impart knowledge and skills appropriate to the employment market in the immediate community and at the same time aim at achieving, in the words of the Senate Committee, "a sound balance...between specialization and adaptability." (40). The schools should consider also the extent to which they have a responsibility to co-operate with other agencies in the community in developing job upgrading programs for unemployed out-of-school youth. In addition, many groups have called attention to the inadequacy of existing counselling and guidance services in most Canadian schools. There may well be a need, in fact, for a review of the very function of guidance both in the school and in the community at large. Persuasive are the views expressed by a leading American educator, who has made an extensive study of the modern high school. Dr. James B. Conant has commented:

" There are those who would say that what goes on in the schools should not have any direct connection with the community or the employment situation. I completely reject this idea. The school, the community, and the employment picture are and should be closely tied together. .... Full-time schooling for certain youths through grade 12 may be good or bad depending upon the employment picture. What goes on in the school ought to be conditioned in large measure by the nature of the families being served, the vocational plans and aspirations of the students, and employment opportunities. .... I submit that in a heavily urbanized and industrially free society the educational experience of youths should fit their subsequent employment. This should be so whether a boy drops out of school in grade 10, after graduation from high school, or after graduation from college or university. In any case, there should be a smooth

transition from full-time schooling to a full-time job.

.....

The obligations of the school should not end when the student either drops out of school or graduates. At that point the cumulative record folder concerning a student's educational career is usually brought to an end. It should not be. To my mind, guidance officers, especially in the large cities, ought to be given the responsibility for following the post-high school careers of youth from the time they leave school until they are 21 years of age. .... This expansion of the school's function will cost money and will mean additional staff -- at least a doubling of the guidance staff in most of the large cities; but the expense is necessary, for vocational and educational guidance must be a continuing process to help assure a smooth transition from school to the world of work. What I have in mind suggests, of course, a much closer relationship than now exists between school, employers, and labor unions, as well as social agencies and employment offices." (41).

406. The Committee has noted with interest the effort that is being made in New Brunswick to cope with the school drop-out problem at a provincial government level through a new program administered by the Youth Division of the Department of Youth and Welfare. We commend the New Brunswick plan to other provinces for their consideration. Elsewhere we recommend that the federal government make funds available to permit demonstration projects of a carefully selected nature to be undertaken in relation to several aspects of delinquency prevention and control. We conclude this discussion of the problem of employment opportunities with the suggestion that the Department of Labour be consulted in connection with this proposed program with a view to examining the possibility of introducing an employment component into any project concerned with delinquency prevention at a community level.

### Community Programs

407. Early in this Chapter we indicated that the term "prevention" as applied to programs designed to combat delinquency has proved to be a somewhat elusive concept. Nevertheless, two essential approaches to delinquency prevention are discernible in the various programs that have been developed. One approach seeks to improve the environment in which children grow up. The other is concerned with improving the quality of services available to children

and their parents, whether provided on an individual or a group basis. A useful introduction to experience in the field of delinquency prevention appears in a Children's Bureau publication referred to previously, entitled *The Effectiveness of Delinquency Prevention Programs*:

" Like other social movements, programs for delinquency prevention have developed through slow social experimentation. To a certain extent, the discoveries of one project have been picked up by those who are planning new programs, and new approaches to the problem have been tried out when old attempts have seemed unsuccessful. ....

.....

Delinquency prevention through services to children began under the mental hygiene movement, in the child guidance clinics. Starting with juvenile delinquents, these clinics pushed back to try to reach children before they became delinquent. In the course of this, the character of their services began to change from social manipulations to direct psychiatric treatment, and their intake policies were altered accordingly. Gradually the clinics came to serve, for the most part, not the children who were likely to come to the attention of the court but those from middle class homes whose parents could ask for and participate in treatment.

These developments led to complaints that the clinics - and the social agencies that came to pattern their work along much the same lines - were not reaching all the children who needed help and that they were not providing all the needed kinds of services. In consequence, delinquency prevention experiments were undertaken along two new lines. One line was that of trying to reach the delinquent and predelinquent children who were not being served by the clinics and other community agencies. The other was directed toward discovering new ways of helping children.

Among the new ways of reaching delinquency prone children hitherto regarded as untreatable are some that make use of ideas developed under the environmental mode of approach to delinquency prevention. They draw upon sociological conceptions



of delinquency causation and upon sociologists' knowledge of slum areas and gang life, and they add to this the techniques of social group work.

In the meantime those who were hoping to prevent delinquency through improving schools, recreational facilities, and the like were learning something from the others (sociologists, psychiatrists, and social workers) about what kinds of improvements are needed. In consequence, current attempts, for instance, to improve recreational facilities go beyond the early idea of merely increasing the supply. They concentrate, in addition, on the character of the recreational program, the quality of the leaders, and the attention given to individual children's interests and emotional needs.

In these ways, then, the movement toward delinquency prevention is beginning to evidence unified development. Even so, the most general observation to be made about delinquency prevention is that as a body of scientific knowledge and practice it is just emerging from its infancy. . . . Fortunately, however, delinquency prevention shows signs of growing into childhood at least. What is most needed now, it seems, is better communication among experts and better assessment of accomplishments." (42).

408. There are four components necessary to any organized community program of delinquency prevention based on the provision of services - components which must be incorporated also into more broadly oriented programs aimed at environmental improvement. The four are: early discovery; sound diagnosis; adequate treatment; and co-ordination of services. What these involve is suggested in a submission prepared for the Committee by the Victoria Day Nursery in Toronto:

"I. Early discovery of families in need of help.

It may appear to be remarking the obvious to state that the sooner families which are showing signs of failure are spotted, the more likely it is that they will welcome and use community help, because discouragement is not so profound. We believe the comment bears repetition.

.....

Those in a front-row position to detect families in trouble require continued education, so they may learn to recognize symptoms when they see them, and know them as that, and also how to initiate appropriate action. Teachers, doctors, the clergy, public health nurses, welfare workers, all have opportunities for first hand contact with such families, and can be influential in directing them to agencies or in interesting agencies in proffering help.

2. Investigation and diagnosis of the nature of the problem and the help required.

Diagnosis of the nature and origin of the problems facing disorganized families is a separate function from early detection. .... Unless proper study can be given to a situation, it is all too tempting to jump to conclusions as to its real components, and to recommend action which is only superficial. .... At present no centrally organized program exists which ensures adequate assessment, and thus fosters maximum use of available services. Assessment and diagnosis can range from perceiving and understanding a simple situation requiring simple direct service to the work involved in considering in depth the intricate pathology of individuals or related members of a family, and the environmental circumstances in which they live. Such elasticity and breadth of knowledge requires proper training and skill; its value .... ought not to be underrated.

3. Treatment and supportive services available to meet the identified needs.

Active work at this point has a dual goal; correction of existing conditions and prevention of further deterioration of the person and the problem. 'Giving help' may imply a variety of services - food and clothing, shelter, assistance with medical problems, care of children, or specialized casework services aimed at complicated personality distortions. Here, time may be the significant factor. Correction and rehabilitation work is slow and delicate. Change does not come quickly or remain constant once initiated. The helping person must be given the time in which to do the job properly. ....

4. A plan of co-ordination of services in a community so structured as to facilitate the above.

Inter-agency co-operation and co-ordination must become more effective if the potential which exists in a community for self-improvement is to be realized. .... The best pattern of service in any community is one geared at creating and maintaining an atmosphere for healthy individual and family development. Family-directed programs, genuinely subscribing to this position, will consider individual client needs rather than functional limitations....". (43).

409. It will be evident that a preventive program organized along these lines requires for its effective implementation a full range of health and welfare services in every community in order that children and their families can have access to those facilities and services necessary for normal growth and for various kinds of special needs. We have already had occasion to call attention to the fact that facilities for in-patient treatment of mentally ill and seriously disturbed children are almost totally lacking in most parts of Canada. We have noted as well that in most areas facilities for intensive psychological and psychiatric appraisal of children identified in the course of the "early discovery" process are far from adequate. We cannot emphasize strongly enough the importance of filling these serious gaps in mental health and welfare services. Similarly, every effort must be made to find ways of remedying the chronic shortage of social workers, psychologists and psychiatrists that has long hampered development in Canada in the fields of welfare and corrections alike. In particular, we recommend that the federal program for providing financial assistance for the training of professionals in the mental health and welfare fields be reviewed to determine whether it is adequate to attract qualified persons to the types of work where they are most needed and in the numbers that are required.

410. Over the past ten or fifteen years a basic re-examination of traditional concepts of delinquency prevention has been taking place in a number of quarters. Experts in various social science disciplines have questioned the adequacy of the approaches that have thus far been tried to reach the fundamental sources of the problem in the community. This change in emphasis is apparent, for example, in the Report on Juvenile Delinquency submitted to the United States Congress in 1960 by the Children's Bureau and the National Institute of Mental Health:

" What are some of the problems in establishing a treatment and prevention program in a community? In recent years, there has been a shift away from the attempt to deal with juvenile delinquency by isolated



efforts of training schools, probation officers, or guidance clinics. As has been emphasized, there are individual offenders who become delinquent because of intrapsychic conflicts, but it is also true that there are many social factors that cannot possibly be manipulated and controlled by clinical effort alone. Most of these efforts are too new as yet to have developed any reliable statistics as to their effectiveness. Such knowledge as is available suggests that a promising plan for community programs using both the clinical and non-clinical approaches can be constructed around the following three aspects:

- (1) An integration of the community clinical and treatment facilities -- ranging all the way from remedial reading clinics, for example, to residential treatment installations.
- (2) The stimulation of interested concern on the part of the nontreatment agencies in the community, including the school system, the churches, recreational facilities, employment agencies, etc.
- (3) An organized 'arm for reaching out' into the socially most desolate and disorganized wastelands of society where the delinquency rates are highest and where the general social spirit is one of alienation, apathy, and bitterness regarding their own conditions and the opportunities for betterment. It is here that the use of detached workers, and aggressive case-work with multi-problem, 'hard-core' families is most important. Seasoned professionals in the social work area have developed techniques by which such families may be identified and involved in treatment." (44).

411. Various kinds of delinquency prevention programs have been developed over the years. We make no attempt in this Report to discuss any of these in detail. It may be useful, however, to note some of the basic approaches that have been tried. (45). One approach that has been employed since the 1930's is the area project, which seeks to reduce delinquency in deteriorated neighbourhoods by assisting residents of these areas to take constructive action on their own through effective neighbourhood organization. Delinquency is

viewed essentially as a product of social learning and, on the assumption that young persons are responsive to the expectations of their families, friends and neighbours, an effort is made to influence delinquent and "pre-delinquent" youth through the utilization of neighbourhood groups in which local residents are active participants. Another "environmental" approach has been organized around the provision of large-scale recreational facilities in depressed communities, often through the auspices of Y.M.C.A.'s or Boys' Clubs and frequently with the object of providing a group work service as well. Other approaches include work-camp programs, the establishment of all-day neighbourhood schools, school program revision and the extension of Boys' Club activities. Programs of an educational or therapeutic nature have been of several kinds. Reference has already been made to the work of child guidance clinics and to projects concerned with the "multi-problem family". The Cambridge-Somerville project in Boston placed its principal emphasis on intensive counselling of young persons selected for "treatment", although educational assistance and recreational opportunities formed part of the program as well. Other efforts have included "aggressive casework" and programs aimed at revitalizing parent-child relationships. Much of this kind of work is undertaken by settlement houses, which have made a valuable contribution to delinquency prevention. In recent years, special emphasis has been placed upon programs of group work with delinquent or near-delinquent gangs, and upon various casework and psychiatric programs that are designed to seek out maladjusted youngsters in need of help. Of particular interest is the "detached worker" concept, which represents an attempt to reach delinquency-prone youth through a program adapted to the methods and activities of such youth themselves. The detached worker seeks to make contact with "hard to reach" young people on the streets and in restaurants and pool-halls, to gain acceptance by the group and then to redirect the activities of these young persons into more conventional channels. Detached worker projects have been undertaken in several of the larger metropolitan areas of Canada, (46), although as yet only on a very limited scale.

412. Evaluating the effectiveness of delinquency prevention programs has long been a troublesome problem. Indeed, the matter is one that has been quite controversial. One of the basic difficulties is that most efforts at delinquency prevention fail to take into account the need for a thorough and objective evaluation of results as part of the program design itself. Writing in 1954, Witmer and Tufts observed: "Not many programs have been evaluated. . . . Most of the evaluation studies that have been conducted do not meet the criteria of good evaluation. They do not make clear exactly what the preventive measures and processes under consideration are, toward what manner of youth they are directed, how well they have been carried out, and with whom or in what measure they succeed or fail." (47). After a careful review of existing knowledge concerning delinquency prevention, the authors came to the following conclusions:

" First, as was expected from what is known about the causes of delinquency, no panacea for preventing

or reducing delinquency has been discovered.

Second, certain measures, in and of themselves, have been found to be insufficient to reduce delinquency. Counseling and other services of the Cambridge-Somerville type, although liked by many 'difficult' boys and their families, do not keep the youngsters from committing delinquent acts. Much the same seems to be true of the usual sort of recreational services. Psychiatric treatment is inadequate to overcome the influence of grossly unfavorable social conditions and is often unacceptable to families who live in the slums. The usual group work services of a conventional character also appear not to have much effect upon delinquency.

Third, a start toward identifying the kinds of measures that are likely to lessen the delinquent acts of particular types of children has been made. For instance, child guidance, of the usual urban variety, has been found to be helpful to youngsters who suffer from mild personality disorders and to those whose problem behavior stems primarily from distortions in the parent-child relationship. Associations of neighbors in slum areas seem to be able to restore certain delinquent youths to good social functioning. On the negative side, none of the programs has been successful with youths who are psychopathic or otherwise seriously emotionally disturbed.

Fourth, new measures have recently been devised to reach some kinds of children who did not respond to the old. The work with gangs, for instance, picks up where the usual recreational programs failed. The 'reaching-out' kind of casework goes after youngsters and families from disorganized homes in slum areas who have been found to be inaccessible to child guidance ....

All this, taken together, suggests that we are on our way toward learning what does and what does not prevent delinquency, but we still have far to go. Progress toward that objective will call for close co-operation between practice and research. .... We shall be most likely to discover how to prevent delinquency if research is undertaken coordinately with



the development of new measures and the refinement of old ones, if research and practice are conceived as inseparable parts of a single process." (48).

413. A great deal of work has been done in the field of delinquency prevention since 1954. Nevertheless, there is good reason to believe that the conclusions reached by Witmer and Tufts continue to be applicable in a general way to the current state of knowledge about preventive techniques. In the first volume of the publication *Current Projects in the Prevention, Control and Treatment of Crime and Delinquency*, issued in 1962 by the National Council on Crime and Delinquency, the author of an introductory article on "The Research Needs of Practice" felt confident in stating: "It is generally acknowledged among the spokesmen of agencies administering programs directed toward the treatment, control and prevention of delinquency that 'scientific' evidence about the effectiveness of their efforts is sadly lacking. . . . Not a single delinquency prevention program has dared to claim scientific justification for its reported success. . . . We know of some measures that seem to work - but even here we are by no means confident of the reason as to why it works, or on whom it works, or under what circumstances it will continue to work." (49).

414. Perhaps the most ambitious attempt to design a province-wide program of delinquency prevention in Canada has been in the Province of British Columbia. Legislation was passed in 1958 providing for the appointment of a Juvenile Delinquency Inquiry Board. In its Report, the Board took the view that juvenile delinquency is a problem that must be attacked at a community level and emphasized the importance of steps to encourage co-ordinated action by individual communities. The Board observed: "Many resources exist, many programmes are in operation, and many organizations, agencies, and individuals are taking positive and progressive steps to do something about juvenile delinquency. However, a lack of co-ordination of the services, programmes, and resources exists." (50). The Board proposed that within selected communities and on a regional basis there be formed Community Councils for the Prevention of Juvenile Delinquency, the membership to reflect a cross-section of the community. The purpose of these Councils would be to co-ordinate existing facilities and resources, thereby making them available on an integrated basis, and to take the responsibility for positive and constructive planning of local programs of delinquency prevention. The Board further proposed that a joint Provincial Council be formed, consisting of representatives of all departments which provide services that bear upon the problem of juvenile delinquency. The Provincial Council would serve as a co-ordinating body for provincial programs and would also have as its responsibility the assistance and encouragement of local communities in the establishment of Community Councils. Still another recommendation of the Board was that each Community Council employ a special counsellor who, in the words of the Report, "would function as a link between the Council and all the organizations and resources of the community and the potential delinquent", thus ensuring "that constant attention can be given to the development of integrated resources and the rehabilitation of delinquent youths." (51).

415. In consequence of the Board's Report, the office of Co-ordinator of Juvenile Delinquency Prevention Services was established. The Juvenile Delinquency Co-ordinator was directed to conduct a study of the operation of existing committees in communities throughout the province. His Interim Report, submitted in 1963, proposed the establishment of a Community Youth Services Programme based on a system of local Community Youth Services Boards. (52). The plan is of considerable interest, notwithstanding the fact that it has apparently not yet been possible to implement it to its fullest extent. The Interim Report states the overall objective to be: "By co-ordinated planning to assist local communities in promoting effective programmes in education, health, recreation, and welfare for the maximum development of all youth . . . and for the control of influences detrimental to youth." (53). The plan calls first for the formation of an inter-departmental committee consisting of representatives of the Departments of the Attorney-General, Education, Health and Social Welfare. One of the responsibilities of this interdepartmental committee would be to draft unilateral field policy directives to representatives of these Departments at a community level, instructing them to meet together as a Youth Services Sub-committee. Each local Sub-committee, while having certain specific functions of its own, would serve in addition as a nucleus around which would be formed a more broadly based Community Youth Services Board with representation from the municipality and various interested organizations and agencies in the community. It would be the responsibility of the Board to consider and make recommendations to the appropriate authorities concerning such matters as school drop-outs, youth employment, the operation of the juvenile and family courts and community resources generally. The province would aid local communities in a number of ways, including: (a) assisting localities in making surveys of needs and available resources and in appraising the achievement of local programs; (b) rendering assistance in setting up programs for co-ordinating the total community effort, including the improvement of law enforcement; (c) assisting schools in extending their particular contribution in locating and helping children vulnerable to delinquency and in improving their services to all youth; (d) assisting communities in setting up recreational commissions and in extending and broadening recreational programs so as to reach all children; (e) assisting in extending local child-care programs so as to reach all homes needing such help; (f) assisting in recruiting and training voluntary leaders for youth-serving organizations; and (g) assisting localities in securing needed specialized services such as medical, psychiatric, psychological and social-work services. Much of the province's contribution would be of a consultative nature, including acting as a clearing-house for information, developing materials, arranging conferences and helping generally to develop and maintain an enlightened public opinion in support of programs aimed at the control of juvenile delinquency.

416. An important new development in the concept of delinquency prevention programming came as the result of the appointment in 1961 of the President's Committee on Juvenile Delinquency and Youth Crime in the United States. The Report submitted by the President's Committee is a document of some importance and, for this reason, we quote from it at considerable length: (54).

" Frequently, the persistence of delinquency is attributed to insufficient funds. If only more money were available, it is argued, for proper facilities, expansion of existing programs, and enlargement of youth service staff with better qualified personnel, the problem could be overcome. Undoubtedly, effective solutions to delinquency will require additional financial investments from both public and private sources. It is equally clear, however, that more money alone is not the answer....

It is the opinion of the President's Committee that additional funds in this field can only return their full value when local communities have carefully planned the redevelopment of their youth services. Throughout the Nation we must speed the development of our planning, program and training instruments to implement successful prevention programs. The Committee further believes that Federal assistance to local communities is essential at this time to accomplish this objective.

The President's Committee has evolved a set of policies for this purpose. It calls for development of a coherent pattern of technical assistance and demonstration grants by the Federal agencies concerned with various types of youth problems or communal activities which affect youth opportunities. It requires close coordination of these activities with the planning, program and training efforts of local communities whenever they are ready to mobilize a comprehensive redevelopment of youth services. It commits the Federal Government to a partnership role with these communities in financing new demonstration programs and in collecting and disseminating information about these delinquency prevention activities to other communities as well. In the long run, it looks toward the development of a tested body of knowledge about the scope of existing youth services, the gaps in these services, the new programs that are needed, the sources of financial aid, and the types of new legislative or administrative enactments which will create the necessary resources.

.....

Clearly we face a task that deserves our greatest



efforts. But we also face a challenge to the depth of our understanding and the strength of our determination to see clearly what is needed and to act vigorously to achieve it. What then are the crucial points from which a successful new attack can be launched? To obtain an answer we must study our current social service programs which address the problems of youth. The Committee's analysis revealed several key areas where more vigorous action would enhance our prevention and control efforts.

### The Basic Areas for Action

An effective organization of youth services within a local community should reflect adequate planning, programming, and training. Unless we invest sufficiently in each one of those areas we will inevitably face rising rates of youthful misconduct.

### Planning

A review of various planning operations for organizing programs to prevent and control delinquency revealed four essential components which must be reinforced for a renewed attack: (1) coverage of multiple causes, (2) sufficient authority for change, (3) full utilization of resources, and (4) integration of research, evaluation, and action.

- (1) Coverage of Multiple Causes: A common approach in many planning efforts is to regard delinquent behavior as an individual problem, rooted in the delinquent's emotional disturbance, family inadequacy, bad companions, reading deficiency, etc. The source of trouble is attributed to a personal deficiency of the individual delinquent. This view ignores the converging pressures and effects of the social conditions under which he lives, such as inadequate opportunities, discrimination, etc. Furthermore, there is often a tendency to search out a single, common cause and to neglect other equally important sources of delinquency. If such limitations are not overcome, the

prevention program will attack only part of the total problem. By focusing only on individual offenders, they will neglect the underlying social conditions which would continue to generate new acts of deviance. The solution would be only partial, serving to mitigate but not to prevent delinquency.

- (2) Sufficient Authority for Change: Closely related to this danger of oversimplifying the problem is the necessity for mobilizing sufficient authority for organizational change behind the planning process. Depriving social conditions within the local community generate many pressures toward delinquency. Planning an effective prevention program may require pervasive changes -- changes which reorganize existing youth services and create new ones. Inevitably many organizational or personal investments in the community will be affected. These interests need to be represented and to participate for the planning process to succeed. They must lend authority and support to the changes contemplated by the planning operation. No planning organization can hope for success if it lacks sufficient authority or excludes sources of community influence whose support is mandatory if the necessary social changes are to be achieved.
- (3) Full Utilization of Resources: Inadequate exploitation of community resources and talent can materially hamper the planning operation. We must not risk a serious gap between our understanding of social problems and the use of this knowledge in planning. This advanced knowledge tends to accumulate in institutions of higher learning or organizations for specialized study and research. There are relatively few communities without some access to such resources. It is essential that planning groups in delinquency prevention develop effective communication and working relationships with them. The most fruitful enterprises are bound to be those in which the practical skill and understanding of the youth service practitioners are integrated with the theoretical and research

competence of the academic professions.  
To weld these resources into a unified  
planning team is to promote better solutions  
to delinquency.

- (4) Integration of Research, Evaluation, and Action:  
Every new program for youth services should plan for adequate evaluation of the results. Many promising delinquency prevention measures throughout the country have been tried and then forgotten. Their potential usefulness has been lost for lack of adequate means to evaluate and communicate their impact. Usually this happens because of the great pressure to undertake new services immediately. The need of young people for these services is generally so painfully obvious that no time is left to develop a proper evaluation research plan to report the strong or weak points of the new action program. Instead reliance must be placed upon the subjective judgments of the practitioners administering the action program. Consequently, evaluations tend to be sketchy, biased and superficial. It is sometimes clear that the program has helped to control or reform in outstanding cases, but its impact in ameliorating significantly the problem in the community is seldom ascertainable. Clearly, the immediate goal of an effective action program for many new communities requires a close integration of program and research activities.

Furthermore, unless we build evaluative research into our action programs, we may also suffer serious long-run costs. We must accumulate a tested body of knowledge about the programs that work best to prevent delinquency and related youth problems. Otherwise, we may waste financial resources that might have been invested more prudently and effectively. If no solid factual ground is laid for determining future program priorities, the allocation of new welfare service funds is likely to be haphazard.

### Programming

Adequate planning is the foundation on which a successful prevention program is built. The sources of delinquent



conduct, especially in our large urban centers, are exceedingly complex. We require more advanced planning today than may have been necessary in a simpler society. We face heavy competitive demands from a wide variety of services for our welfare dollars and our training personnel. We need firmly established priorities to guide the investment of these scarce resources. We must have a well integrated set of prevention programs to mount a successful attack against the diverse sources of delinquency. In the Committee's judgment, there are two primary conditions which we must establish if a broad new attack on youth problems is to succeed.

- (1) Integration of Programs: In surveying prevention programs throughout the country, the Committee has been favorably impressed with the number of useful and promising projects now in operation. Some attack problems in the home situation. Others deal with the education, employment, recreation, and emotional problems of young people. These programs, however, are widely scattered. The challenge is to bring all of them together to form a comprehensive attack on youth problems in a single community. We cannot charge each specialized program with solving the total problem of delinquency by itself. Their full preventive impact requires supportive programs in related problem areas which need solution at the same time. We must avoid a situation in which useful programs are picked up one after the other as total panaceas and just as quickly dropped, because they failed to provide the complete solution. Such fragmentation of services would not build the accumulating body of knowledge about successful prevention which we sorely need and would sacrifice many promising ideas.
- (2) Coordination of Program: Useful programs dealing with youth problems in the school, home, job, recreation or correctional services must not be allowed to function in

comparative isolation from one another. Under such conditions, conflicts in method and orientation remain unresolved and the effective impact of each program is sharply reduced. To deal with each part of the total delinquency prevention problem in a separate agency with relatively little inter-communication obviously is wasteful and self-defeating. Such a complex problem cannot be solved by any single treatment agent alone. It requires the application of many different skills and bodies of specialized knowledge working in close concert.

### Training

Effective planning and program activities depend on an adequate supply of well-trained professional and volunteer persons to do the job. One of our greatest challenges is to furnish this trained body of workers as rapidly as possible.

- (1) Adequate Supply of Staff: The rapid increase in the size of the delinquency problem and the number of proposed prevention and control programs makes the acute shortage of trained staff progressively more serious. Strong competition is emerging for a limited number of professionally trained practitioners to service a broad range of welfare functions. We must not permit limitations of budget, nor inadequate investment in training, to make it necessary for us to staff new youth service programs with persons not adequately qualified for the task.
- (2) More Specialized Training: Even professional staff personnel usually require special training for understanding or coping with the complex problem of delinquency. To facilitate this, more knowledge about the sources and patterns of delinquency must be developed into specialized training courses. We need more instruction in techniques for identifying and attacking these sources in the conditions of community life as well as in individual cases. To make our attack

successful, we must be prepared to support more intensive and specific training in this field for both professional and volunteer personnel."

417. The views of the President's Committee found expression in two federal programs for which a substantial appropriation was authorized under The Juvenile Delinquency and Youth Offenses Control Act of 1961. The two programs are complementary and together represent a new departure in programming in the field of delinquency prevention. The more ambitious of the two is the Demonstration and Planning Project Program. Its primary objective is to stimulate the development of comprehensive, co-ordinated community approaches to delinquency prevention by means of financial grants to support demonstration projects in a number of selected communities that are prepared to mobilize all of their relevant resources for a total attack on the problem. Communities throughout the United States were invited to make application for a planning grant, submitting in support of the application a program design for consideration by a Technical Review Committee. It was intended that the design would cover in some detail such matters as the following: (a) a theoretical framework relating to the causes of delinquency and to the reasons for inadequate opportunities for youth; (b) "baseline" information relating to the size of the problem, available resources and the nature of the community involved; (c) a theory of action addressed to the causes identified and expressed in terms of the needs and resources of the community; (d) a specific program designed to implement the theory; and (e) a model for the evaluation of results. From among applications received a number of communities were awarded planning grants to enable each recipient to develop in considerably greater detail the program design submitted to the Technical Review Committee. In this way a number of comprehensive plans would be prepared and, on the basis of these, several communities could be selected to receive much larger grants for the conduct of demonstration projects designed to test out the most promising plans in action.

418. An essential objective of the Demonstration and Planning Project Program is to provide an opportunity for experimenting actively with the best ideas available in a way that makes it possible for the country as a whole to benefit from the fresh thinking and creative efforts of individuals and communities working on the problem of delinquency prevention. One official publication describes the role of the federal authority as follows: "The Federal Government can stimulate . . . action and provide guidance as well as a collected body of national experience, but the actual job has to be done by the local community where the conditions exist." (55). While we make no attempt in this Report to discuss in detail the operation of this large-scale American experiment in delinquency prevention, there are several features about it that are especially worthy of note. One is the recognition of the fact that the evaluation process is an essential component of any experimental program. A second is the emphasis that is placed upon comprehensive planning. It is expected, for example, that each project plan will take something in excess of a year to prepare. The planning



extends to the organized structure of the planning body, which must have representation from the municipality, the school system and the principal youth-serving agencies, and must also have skilled research assistance. Consultants attached to the President's Committee work with the local project staff in helping to define the nature of the planning required. A third point is that the Program seeks to encourage a community-wide approach to delinquency prevention. It is, in fact, concerned as much with youth opportunities and under-privileged youth as it is with juvenile delinquency, accepting as a basic premise the view that little can be done about juvenile delinquency without an organized attack on the basic conditions in the community that give rise to it. This is evident from the criteria established by the Technical Review Committee for the award of grants. These criteria include: (a) a scheme must be comprehensive, showing evidence of concern with the development of a strategy of integrated programs and services directed toward the major sources of youth problems that have a bearing upon delinquency; (b) there must be wide involvement and active co-operation of public and private agencies in the community; (c) the community must itself make a financial commitment to the program; (d) the idea must appear to be one that could be transferred and applied to other communities; and (e) the program must incorporate plans for the systematic assessment of its effects.

419. The second program is concerned with personnel training in the various fields of activity that are relevant to delinquency prevention and control. Under the training program, funds are made available for projects of three kinds:

(1) Provision is made first of all for the establishment of a number of training centres at selected academic institutions throughout the United States. Institutions were chosen from among applicants submitting a systematic plan for training that met the following requirements: (a) teaching competence; (b) a range of relevant disciplines and the ability to co-ordinate them; (c) willingness to share costs; (d) adequate physical facilities to house a centre; and (e) access to target populations. The following explanation of the function of the training centre appears in the Report of the President's Committee: "These centres will mobilize and foster training competence in youth services. They will train persons who may function in turn as training staff in their own communities. The course of instruction will offer an interdisciplinary orientation to youth problems, together with specific training in specialized areas of practice, such as law enforcement, correctional treatment, youth education, youth employment, family and child welfare, and recreational services. These centres may also become focal points for the collection and dissemination of new information on the extent

of delinquency and related youth problems and appropriate methods of coping with them. Furthermore, related research projects will be encouraged at the centres to feed new knowledge into the training experiences." (56).

(2) A second kind of project relates to curriculum development. Here the object is to develop new training materials of two basic types. The first is "core knowledge" relating to youth problems generally – that is, knowledge that will be useful in the training of all persons who work with youth, regardless of their particular speciality. Included are new materials on such subjects as the family, theories of causation, the social psychology of youth, the culture of poverty, and the like. The second type is material designed to meet the needs of various kinds of specialists in youth work. It is intended, for example, that specialized materials will be developed for the training of persons working with youths in training schools and other kinds of treatment centres, as law enforcement of probation officers, in the school system, and in connection with recreational and other community programs. Among the other objectives of the curriculum development aspect of the Training Program are the development of: (a) an interdisciplinary approach to problems of delinquency prevention and control, through the integration of subject-matter; (b) new ways of communicating knowledge; and (c) new methods of evaluating the effectiveness of programs.

(3) There is an allocation of funds also to enable short-term workshops, institutes and seminars to be held in a number of communities. This part of the Program is directed at line or field personnel and is designed to meet more immediate needs for educational upgrading of persons currently involved in youth work. What are contemplated are courses and programs for juvenile court judges, police, probation and after-care staff, teachers, agency and welfare workers, and vocational counsellors and the employment personnel. A further objective is to locate training activity as much as possible within various communities themselves, having regard to the fact that juvenile delinquency must ultimately be attacked at the community level. Thus it is considered important to make the overall Program visible to individual communities as part of a large-scale attempt to mobilize community interest and support by whatever means seem promising.

420. It will be evident from the discussion in this Chapter that if programs of delinquency prevention are to be developed that offer any realistic hope of positive results, considerably more study, effort and financial support will be required than has thus far been devoted to a problem that should be one of major social concern. It is obvious also, of course, that the constitutional division of power in Canada places important limits on the power of the federal authority to act. Nevertheless, we do think that the Government of Canada has a contribution to make. In saying this, we state again our view that "co-operative federalism" of a high level will be needed if that contribution is to be an effective one. Some possible lines of approach to federal participation are set out in the Conclusion of this Report.

#### Footnotes

1. See Rapoport, "The Concept of Prevention in Social Work," 6 Social Work No.1 (January, 1961). A recent submission to the Ontario Select Committee on Youth analyzes "primary" and "secondary" prevention in the following terms: "Preventive measures can be defined as those activities which tend to reduce the incidence or development of social problems, or which tend to limit their duration or the degree of disability which they produce. At the primary level it is obviously possible to reduce such damagingly stressful situations as unemployment, social segregation and isolation, and malnutrition, and at the same time to strengthen the individual's ability to handle major life crises. At the secondary level there is little doubt that the prevalence of maladjustment could be reduced by early diagnosis which in turn could be facilitated by training key workers in the community, e.g. teachers, clergy, public health nurses, to identify those who are in need of skilled help. Again, it is essential to provide adequate facilities to care for those children who cannot be given the care they need .... and who are 'at risk'....". Canadian Mental Health Association, Ontario Division, Brief to the Ontario Legislative Assembly Select Committee on Youth (1964), p.22.
2. Witmer and Tufts, The Effectiveness of Delinquency Prevention Programs (U.S. Dept. of Health, Education and Welfare, Children's Bureau, 1954).
3. Id., at pp. 1-14.
4. Frankel, "The Research Needs of Practice," in Current Projects in the Prevention, Control and Treatment of Crime and Delinquency (National Council on Crime and Delinquency, vol.1, 1962) p.45,



at p.51.

5. See, for example, Bovet, Psychiatric Aspects of Juvenile Delinquency (1951), c.2; Friedlander, Psycho-Analytical Approach to Juvenile Delinquency (1947); Jenkins and Hewitt, "Types of Personality Structure Encountered in Child Guidance Clinics," (1944) 14 American Journal of Orthopsychiatry 84; Hall and Lindzey, Theories of Personality (1957); Trasler, The Explanation of Delinquency (1962).
6. We think it useful in this connection to quote again from the Brief of the Ontario Division of the Canadian Mental Health Association to the Ontario Select Committee on Youth: "... It is essential that all possible measures be taken that will reduce those situations which lead to family breakdown. It is contended that adequate parent and family life education is the key to the solution of many of the problems which beset young people today .... An extensive review of the literature and research in the area of delinquency reveals that it has its beginnings in the home and that one or more of three common factors are nearly always found to be in the delinquent: a lack of security, a lack of self control and a lack of a worthwhile set of values. Discipline, Security, Values: these are the qualities which the home must provide and yet it is evident that many homes are not providing them. Equally it is evident that there are relatively few parents who wilfully neglect or damage their children and one is forced to the conclusion that much harm is done simply because some parents are not aware of their duties and responsibilities or are unable to express their love and concern or have not learned or acquired the techniques which successful parenthood involves. Extensive programming in the area of family education is sorely needed, and a great drive is necessary to promote education in child care, in homemaking, in home economics, and to provide better marital and pre-marital counselling services. It is our contention that the preservation of harmony in the family is the first requisite for the mental health of its members and if the mounting incidence of social maladjustment and emotional disorder is ever to be halted parent education is absolutely vital." Brief to the Ontario Legislative Assembly Select Committee on Youth, supra note 1, at pp.4 and 23.
7. Brief submitted by the Calgary Family Service Bureau and Catholic Family Service (1962), p.7.
8. See, for example, Community Chest and Councils of the Greater Vancouver Area, Proposal for an Area Demonstration Project (1962).

9. Brief submitted by the Victoria Day Nursery, Toronto (1962), p.4.
10. O'Sullivan, The Inheritance of the Common Law (1950), p.59.
11. Tappan, Juvenile Delinquency (1949), pp.514-516.
12. U.S. Dept. of Health, Education and Welfare, Children's Bureau, Understanding Juvenile Delinquency (1949).
13. Report of the Committee on Juvenile Delinquency of the Social Planning Council of Metropolitan Toronto (1962), p. 19.
14. Hearings before Subcommittee of the Senate Committee of the Judiciary, 87th Congress, 1st Sess. (1961), pp. 1590-1592.
15. Report prepared by the Special Services Division and interested parties of the Edmonton Public School Board (1962), p.1.
16. Tappan, op. cit. supra note 11, at p.500.
17. State of California, Department of Education, "The Role of the School in the Prevention and Control of Juvenile Delinquency," in Report of the Governor's Special Study Commission on Juvenile Justice (California, Part 1, 1960), p.100, at pp. 101-102.
18. "The performance of delinquents still in school clearly sets them apart .... Truancy tends to begin early; 25 per cent of all delinquents are chronic truants, and almost every delinquent has some degree of truancy in his background. Studies have shown an average of three years' retardation in grade level, and a likelihood of testing even lower than the actual (retarded) grade placement on achievement tests....". Cook and Rubinfeld, An Assessment of Current Mental Health and Social Science Knowledge Concerning Juvenile Delinquency (National Institute of Mental Health, 1960) c. 111, p. 15. Similar results have been found in studies conducted in the Cities of Halifax and Hamilton. In both cases the correlation between truancy and areas of high rates of delinquency is apparent. See Report on the Problem of Delinquency prepared by the Corrections Division of the Welfare Council of Halifax (1962), p.3; Brief submitted by the Juvenile Delinquency Study Committee of the Social Planning Council of Hamilton and District (1962), pp.25-26 and Appendix "A", pp. 12-13. Some of the research findings on the relationship between truancy and delinquency are reviewed in Wootton, Social Science and Social Pathology (1959), pp. 116-118.
19. Kvaraceus and Ulrich, Delinquent Behavior: Principles and

20. Ibid., c.4. One community brought to our attention in this connection is the City of Trail, B.C., which appears to have been most successful in developing a work experience program as part of its school curriculum.
21. Edmonton Public School Board, supra note 15, at p.1.
22. U.S. Dept. of Health, Education and Welfare, Children's Bureau, Helping Children in Trouble (1947), p.1.
23. Submission of the Canadian Mental Health Association, New Brunswick Division (1962), p.1.
24. Tappan, Crime, Justice and Correction (1960), p.489.
25. Kvaraceus and Ulrich, op. cit. supra note 19, at p.32.
26. Id., at p.33.
27. "There are two staff members in many schools who are strategically placed .... (These are).... the guidance counsellor and the attendance officer .... It is unfortunate that the role of guidance counsellor is often confined to giving assistance in the area of vocational guidance but this situation may well have arisen because presently those so employed have been trained to do little more than this; though many are anxious to broaden their scope, they feel inadequately equipped to do so .... It is patently clear that the personal qualities of those concerned must be such as will make the establishment of rapport with children relatively easy and their specific training must be so developed that they are equipped for personal counselling. Similarly, the role of the attendance officer is a crucial one, since no member of the school system is in a better position to obtain a picture of the child within its home or of the home influences which are so often the cause of emotional disturbance and maladjustment. The role is one which is being increasingly recognized, as it should be, but the success which many attendance officers achieve would be likely to be increased if they were provided with adequate and special training in the causes behind the phenomena of truancy and school phobia, in counselling skills and in the methods of seeking



- co-operation from other community resources." Canadian Mental Health Association, Ontario Division, Brief to the Ontario Legislative Assembly Select Committee on Youth, pp.7-8.
28. "The Role of the School in the Prevention and Control of Juvenile Delinquency," supra note 17, at p. 107.
  29. Id., at pp. 107-108.
  30. Kvaraceus and Ulrich, op. cit. supra note 19, at pp. 288-289.
  31. Report of the Committee on Juvenile Delinquency of the Social Planning Council of Metropolitan Toronto (1962), p. 18.
  32. Tappan, op. cit. supra note 11, at p. 502.
  33. Weston, "The Role of the School in Crime Prevention," in Trends in Crime Treatment (National Probation Association Yearbook, 1939), pp. 38-39.
  34. Greater Hamilton Y.M.C.A., Out of School Youth - Will They Work This Year? (1962), p. 13.
  35. Mobilization for Youth, Inc., A Proposal for the Prevention and Control of Delinquency by Expanding Opportunities (1961), pp. 236-240.
  36. St. Christopher House (Toronto), School Drop-Outs - Our Disinherited Youth (1962), pp. 6-12.
  37. Data for paras. 400 and 401 was supplied by the Special Services Branch of the Department of Labour, Ottawa.
  38. See supra para. 127.
  39. Report of the Special Committee of the Senate on Manpower and Employment (24th Parl., 4th Sess., 1960-61), p. 8.
  40. Id., at p. 8.
  41. Conant, "Social Dynamite in Our Large Cities," in Report

of the Conference on Unemployed, Out-of-School Youth in Urban Areas (National Committee for Children and Youth, 1961), p.26, at pp.38-40.

42. Witmer and Tufts, op. cit. supra note 2, at pp.7-8.
43. Brief submitted by the Victoria Day Nursery, Toronto (1962), pp.5-8.
44. U.S. Dept. of Health, Education and Welfare, Report to the Congress on Juvenile Delinquency (1960), p.11.
45. See generally, Witmer and Tufts, op. cit. supra note 2; Witmer (ed.), "Prevention of Juvenile Delinquency," 322 The Annals of the American Academy of Political and Social Science (March, 1959); Glueck, The Problem of Delinquency (1959), c.33.
46. Examples are the detached worker projects undertaken by the Youth Services Bureau of the Ottawa Welfare Council and by the University Settlement in Toronto.
47. Witmer and Tufts, op. cit. supra note 2, at p.47.
48. Id., at p.50.
49. Frankel, supra note 4, at pp.61-62
50. Report of the Juvenile Delinquency Inquiry Board (Victoria, 1960), p.14.
51. Id., at p.17.
52. See Gorby, An Interim Report and Recommendations on Co-ordination of Government and Community Resources in the Treatment of Juvenile Delinquency for Rural British Columbia (Victoria, 1963), pp.14-17.
53. Id., at pp. 16-17.
54. Report of the President's Committee on Juvenile Delinquency and Youth Crime (1962), pp. 1-11.

55. U.S. Depts. of Justice, Labor and Health, Education and Welfare, The Federal Delinquency Program: Objectives and Operation Under the President's Committee on Juvenile Delinquency and Youth Crime and the Juvenile Delinquency and Youth Offenses Control Act of 1961 (1961), p. 4.
56. Report of the President's Committee on Juvenile Delinquency and Youth Crime (1962), pp. 14-15.





## PART VI     RESEARCH

### CHAPTER XII

421. The federal, provincial and municipal governments in Canada spend annually millions of dollars in the field of juvenile delinquency by way of efforts at prevention, detection, apprehension, adjudication, treatment and after-care. However, as we have already had occasion to point out, little is known in this country concerning the effectiveness of the many and varied techniques that are employed to meet the delinquency problem. This is a doubly wasteful situation because many current expenditures may not only serve little useful purpose, but may, indeed, support programs that tend to do more harm than good.

422. It was no surprise to the Committee, therefore, to find almost universal support for a research program aimed at accomplishing essentially the following objectives:

- (a) the development of improved techniques for the prevention and detection of delinquency at an early stage,
- (b) the evaluation of existing treatment procedures not only from the point of view of expense but also of effectiveness, and
- (c) the development of new treatment procedures that would produce the most effective results at minimum public expense.

423. Evident also in the various submissions to the Committee was the recognition that more adequate means must be devised for bringing research efforts to bear upon the formulation of policy. The consensus was perhaps best expressed by the School of Social Work of the University of British Columbia, which stated in its submission as follows:

" The mark of enlightened social policy is that it is framed with a clear view to what is known about the issues to which it is addressed, and equally, on the other hand, to what remains problematical. We take it as a premise of our submission that this principle should apply with full force to Canada's policies in regard to the urgent and controversial questions associated with the detection, measurement, control and treatment of juvenile delinquency.

No impartial or scrupulous student of this

problem can escape the conclusion that little is known, as yet, that could serve as a secure and indisputable basis of social action in relation to the problem of juvenile delinquency. To be sure, there is an abundance of published writing on the subject. A comprehensive bibliography of all the books and articles dealing with juvenile delinquency that have appeared even within the last decade would assume gigantic proportions. Nor is there any dearth . . . . of popular theories as to the best methods of coping with the problem, -- theories that are no less tenaciously or energetically advocated for all that they rest, in the majority of instances, on the flimsiest of evidence. Yet if one were to compare what is known with any reasonable degree of certainty about juvenile delinquency with (let us say) what is known about the causes and treatment of typhoid fever, it would be immediately apparent that the available facts are scanty, the available diagnoses speculative, and the available prescriptions no better than hopeful.

Of course, we do not plead this situation as a ground for inactivity. Professors may be able to afford the luxury of a detached scepticism, but meanwhile statesmen and public servants must proceed upon the basis of such information as is available to be proceeded upon. What we do urge, however, is that the poverty of hard facts and genuinely convincing theories we have spoken of should be honestly and courageously faced, and that a determined willingness so to face it should constitute a major element of our social policies for juvenile delinquency.

What would be the practical implications of such a resolute confrontation of our ignorance? As we see the matter, they comprise four closely linked but independent requirements: (1) a willingness among those having responsibility for such matters to stimulate and subsidize research into the causes, prevalence, prevention and treatment of juvenile delinquency; (2) an equal willingness on the part of all levels of personnel concerned with the problem to acquaint themselves with the results of such research and to incorporate them as integral features of their various programs of action; (3) a commitment in their work, on the part of



legislators, administrators and clinicians alike, to the values of experiment, innovation, and creativity; (4) and a commensurate readiness to abandon, decisively and without compunction, those approaches to the problem of juvenile delinquency which have proved to be unfruitful or harmful.

.....

We should not wish to be interpreted as claiming that research will in fact 'solve' the problems of juvenile delinquency. Research has succeeded in making poliomyelitis a controllable disease but has not done so for cancer. The same uncertainty of outcome would attend research into juvenile delinquency. What is even more to the point is that research by itself can accomplish nothing; it is only when it is used that it becomes valuable. .... It is for this reason that we lay such emphasis on the crucial importance of integrating policy and research...." (1).

424. What must be emphasized above all else, then, is the importance of fusing the processes of social inquiry and policy-making so that together they become an intelligent and adaptive tool of statesmanship. The accomplishment of this objective is not solely a matter of learning more about crime and delinquency - although this remains, of course, the essential goal of research. What is required also is an effective means of collecting and transmitting knowledge as it is developed and of co-ordinating the research efforts that are being undertaken in various quarters. Thus the author of a recent article on "The Research Needs of Practice" observes:

" Only when .... systematically collected and organized data accumulates, can we look forward to the formulation of empirically based theoretical explanations of human behavior that will be translatable into definable and measurable programs for the treatment, control, and prevention of crime and delinquency.

This is the key issue of research in problems of crime and delinquency and their treatment, control, and prevention. How can our research efforts not only be expanded and intensified in all substantive areas by all relevant behavioral disciplines, but, how can we also begin to coordinate and integrate the various research efforts effectively so that they bear upon common theoretical concepts and problems and thus lead to

the cumulative growth of scientific knowledge?  
How can our practice and action programs incorporate research so that there is a mutual enrichment in the design and conduct of both subsequent research and practice efforts? We have reached a stage in our thinking, and dealing with, the problems of crime and delinquency, so that in modified form, Kant's dictum is very pertinent to our efforts: 'Practice without research is blind, and research without practice is empty.' " (2).

425. We make no attempt in this Report to suggest in any specific way the areas of inquiry in which research activity is needed in Canada. It is perhaps sufficient to note, in the words of a submission prepared by the Social Planning Council of Metropolitan Toronto, that "the field of research, with rare exceptions, is a vast no-man's land of neglect". (3). However, we do think that comment is in order in regard to the basic orientation of Canadian research efforts. In the Committee's view, the following are required:

- (1) periodic and, if possible, regular evaluations of the achievements of specific components of the Canadian system in all its aspects, including programs both of prevention and control;
- (2) a central clearing-house for information on research projects and their reported results, including periodic efforts at critical appraisal;
- (3) the promotion not only of methods for increasing our knowledge of juvenile delinquency but also of methods for improving channels of communication and for promulgating and using what we do already know, through news-letters, conferences, the compilation of bibliographies, the provision of abstracting services, and the like;
- (4) studies of the prevalence, distribution and kinds of delinquency to determine (a) the relationship between delinquency and social, economic and ethnic factors, and (b) where the major preventive and rehabilitative efforts should be concentrated; and
- (5) the programming of "demonstration projects" - that is, the establishment by reference to defined geographical, social or other criteria

of novel and untested but promising and carefully considered services the general applicability and value of which can be assessed in a systematic way as part of the project design itself.

426. The research that is necessary in Canada can be undertaken in many settings and by a number of agencies (see Appendix "H"). It is clear that the various levels of government can assist greatly by the careful collection and distribution of information. Operating agencies can set up research programs analogous to the quality control methods developed by industry. There is, in fact, a need for increased awareness of the importance of evaluation as an essential component of major programs of prevention and treatment. Universities with their traditional role of expanding the frontiers of knowledge have a particular responsibility to be concerned with the development of a tested body of knowledge in the field of delinquency. Indeed, the assistance of the universities may be essential to the success of certain kinds of research undertakings, having regard to the fact that an adequate understanding of many problems connected with juvenile delinquency can only be obtained by combining the insight and skills of several disciplines, including law, psychiatry, psychology, sociology and social work. A multi-disciplinary effort of this nature is usually possible only within or in co-operation with the academic community.

427. The assertion that research is needed and that various bodies and agencies should concern themselves with it will remain nothing but a platitude unless those who might be expected to undertake research are given the necessary means to do the job. It is an unhappy reflection on the situation in Canada that there are few sources of financial support for research into problems of crime and delinquency. Clearly more money will have to be made available if an adequate research effort is to be forthcoming. It seems evident that governments will have to provide much of it. The Fauteux Committee stated, in part: "We place the greatest possible emphasis on the urgent need for .... research on crime and on the programs which seek to control crime, because without development in these fields, Canadian efforts will lack professional understanding and direction. The Federal Government, through the Department of Justice, should take the lead .... by financial assistance and other means, since the problems .... involved have national as well as regional significance." (4). We endorse the view thus expressed by the Fauteux Committee.

#### Footnotes

1. Brief submitted by the School of Social Work of the University of British Columbia (1960), pp.3-5.
2. Frankel, "The Research Needs of Practice", in Current Projects in the Prevention, Control and Treatment of Juvenile Delinquency (National Council on Crime and Delinquency, vol.1, 1962), p.45.



at pp. 65-66.

3. Report of the Committee on Juvenile Delinquency of the Social Planning Council of Metropolitan Toronto (1962), p.30.
4. Fauteux Committee, p.86.

CHAPTER X111

CONCLUSION

428.      Youthful delinquency in Canada is a national problem that calls for a national solution. However, as has been noted many times, a subject-matter having so many facets that are exclusively within provincial legislative jurisdiction cannot be dealt with nationally and comprehensively by the Parliament and Government of Canada. Nevertheless, the nature and extent of the problem point up the need for a substantial contribution, in time, effort and money, by the federal authority in order to work toward a country-wide program of prevention, treatment and cure of this social malady.

Youth and Delinquency Research and Advisory Centre

429.      We think that, in the beginning, a major federal government contribution could be made by the establishment, in the Department of Justice, of a Youth and Delinquency Research and Advisory Centre. It should have representation from – or, at the least, liaison with – other federal departments concerned, notably the Department of National Health and Welfare and the Department of Labour. Initially the staff need not be a large one – possibly three or four informed persons. Ultimately it might expect to have a staff of ten or twelve, especially if it were to perform any useful consultative function.

430.      The functions of the Youth and Delinquency Research and Advisory Centre, as we see them, would be as follows:

(1) Research and Co-ordination

- (a) to serve as a clearing-house on research on delinquency and the many related areas which bear upon it;
- (b) to maintain liaison with provincial governments, and also to keep up with developments in other countries in the field;
- (c) to serve as a "secretariat" in relation to subsequent, more detailed studies that should follow, as we have suggested, into various areas covered in this Report, including, so far as practicable, the periodic review of all programs and services that have implications for the successful operation of the juvenile court system and for delinquency prevention and control generally;
- (d) to provide for a biometrics function, collecting and

analysing the data for a continuing epidemiological analysis of delinquency rates, types, distribution, and the like;

- (e) to assist, in conjunction with provincial, municipal and perhaps private agencies, in the organizing of workshops, institutes and seminars for the purpose of improving the channels of communication among persons working in the field, and also for the purpose of training in various aspects of delinquency prevention and control; and
- (f) to serve as a review committee for the processing of applications for research grants, or as a resource body for any such review committee.

## (2) Consultative and Advisory Functions

- (a) to develop standards, guides and instructional materials on various types of activities or services for delinquent young persons - that is, juvenile courts; probation services; police work with juveniles; institutional care for delinquent children; detention care; community co-ordination and planning for the prevention, control and treatment of delinquency; group work with delinquent children and potentially delinquent gangs; and training of personnel, professional and non-professional, working with delinquent youth;
- (b) to provide a consultation service, consisting of a small staff of experts, in relation to the various areas outlined in paragraph (a) above.

## Demonstration Projects

431. The federal government can make another significant contribution by discussing with provincial authorities the possibility of federal funds being allocated for a number of demonstration projects relating to various aspects of delinquency prevention and control. These need not, in every case, be large projects along the lines of those undertaken in the United States. We would hope that one or two such large projects might be included, presumably in Montreal, Toronto or Vancouver. However, we think that most such projects should be relatively small. They might include such things as setting up a model residential treatment centre, experimenting with a small training school establishment with highly skilled staff, setting up a project in which totally



adequate probation services are provided, and the like. Presumably such projects would be spread out across the country on a regional basis.

### Staff Training

432. Finally, the federal government can assist greatly in the establishment of a staff training program. A modest beginning would require no more than an appropriation of funds to establish workshops, institutes, and seminars. There is much to be learned by workers in the field in this way, but it is unlikely that such activities will be developed or maintained on a national basis unless the federal government takes the lead and provides financial assistance.

433. The broad conclusions to which our inquiries have led us can be stated quite simply. Juvenile delinquency is, and should be recognized as, a social problem of major importance. As yet there is little agreement concerning its causes, and perhaps still less about the kinds of measures that are most appropriate to its solution. It seems clear that, if significant advances are to be made in Canada, contributions to our knowledge about the problem must be sought from all possible sources, and means must be made available for co-ordinating such knowledge and for bringing it to bear upon the formulation of policy. There must be a recognition also that some of the answers may require new approaches which are experimental in nature, such as new forms of treatment and new and more realistic methods of training. This carries with it the implication that all programs or services designed as measures of delinquency prevention or control should be subject to periodic evaluation and review, and where there is an obvious failure to accomplish the intended objectives, any such programs or services should be modified or, if necessary, abandoned in favour of a more rational and effective allocation of resources. Above all, there is a need for an expansion of vision of a kind that can only be achieved by giving higher visibility to juvenile delinquency as a distinct focal point for social concern and by bringing a wide variety of experience into program planning in this field. We think it is not inappropriate to suggest that if the same concentration that has gone into developing the Canadian business economy could be brought to bear upon the problem of juvenile delinquency, there would be reason to hope that positive and significant results would soon be forthcoming.



## CHAPTER XIV

### SUMMARY OF RECOMMENDATIONS

434. Our principal recommendations, set out hereunder, are no more than brief summaries inserted for the purpose of convenience. They can best be appreciated when they are read in the context in which they are found in the body of the Report. It is not to be supposed that each recommendation has the full support of each member of the Committee. Nevertheless, each recommendation in the Report reflects the consensus of the Committee or, at the very least, the views of a majority of its members

435. Our recommendations are:

1. The Dominion Bureau of Statistics should be encouraged to continue its efforts to integrate and improve the accuracy of its various statistical series on crime and delinquency (para. 43).
2. The federal government should attempt, so far as its constitutional powers permit, to ensure that there is made available for the benefit of all children who are the subject of proceedings under the Act, an approximate equality throughout Canada of those services that are essential to the implementation of the juvenile court concept. In pursuance of this objective, the federal government should establish standards in relation to relevant services and develop programs of financial assistance in order that the required standards of service can be provided in areas where the necessary resources are lacking (paras. 62-64, 212, 227, 276-277, 311, 323, 336).
3. One or more conferences should be called by the Government of Canada to which should be invited representatives of the major agencies concerned with the administration of justice and with the physical, mental, and social welfare of children. The purpose of the conferences would be to bring together persons responsible for the carrying out of active programs of a public or quasi-public nature to discuss specific programs and specific changes in the law (para. 67).
4. Federal legislation providing for the specialized treatment of juvenile offenders and giving express recognition to their diminished responsibility under the criminal law should operate equally throughout Canada and be available for the benefit of all Canadian children (paras. 79, 80).
5. The term "juvenile delinquent" should be abandoned as a form of legal designation and the terms "child offender" and "young offender" should be adopted (para. 88).
6. The title of the "Juvenile Delinquents Act" should be changed to



"Children and Young Persons Act" (para.88).

7. The minimum age of criminal responsibility under Canadian law – and the minimum age of juvenile court jurisdiction under the Act – should be raised. This age should be set at 10 years or, at most, 12. A uniform minimum age throughout Canada is preferred, but the possibility of a flexible or variable minimum age is not excluded. The minimum age to be selected should be the subject of discussions between the federal government and the provincial authorities before a final decision is made (paras. 111, 114–116).
8. The rule of law that requires the prosecution, in the case of a child between the ages of 7 and 14, to rebut a presumption that the child is incapable of committing a crime by showing that the child had sufficient moral discretion and understanding to appreciate the wrongfulness of his act, should now be abolished (para. 119).
9. The juvenile age should be uniform throughout Canada and should be set at 17. The juvenile court should, in other words, have exclusive original jurisdiction over all offenders 16 years of age and under in every province and region of Canada (paras. 132, 136).
10. There should be an intensive and detailed study of the problem posed by the youthful offender (i.e. 16 to 24 years of age) as part of the development of the criminal law policy of Canada (para. 135).
11. As a matter of public policy quasi-criminal legislation should not be used to achieve welfare purposes if those purposes can be achieved by non-criminal legislation. To this end we recommend that children be charged only with specific offences as is the case in proceedings against adults, and that any provisions in the law that are inconsistent with this principle be repealed (para. 146).
12. A finding that an accused is a "child offender" or "young offender" should be permitted only where he has committed an offence that constitutes a violation of the Criminal Code or of such provisions of other federal or provincial statutes as are from time to time designated by the Governor in Council. Any other offence, whether against a federal or provincial statute, a municipal by-law, or a regulation or ordinance, would be considered an offence of lesser degree, to be known as a "violation". Young persons charged with lesser offences would, with certain limited exceptions, continue to be subject to the juvenile court, and the provisions of the federal Act would continue to apply to all such offences. However, it would not be open to a juvenile court to commit the offender to a training school or, in the absence of parental consent, to remove him from the parental home (para. 149).

13. The law should make clear that a finding that a person is a "child offender" or "young offender" is not to be regarded as a conviction for a "criminal offence" for the purpose of determining whether a person has a previous conviction or is otherwise subject to disabilities by reason of conviction for a criminal offence (para. 150).
14. Where practicable, juvenile traffic cases, excepting perhaps those that do not involve operation of a vehicle, should be heard in the juvenile court. The Act should make provision, however, for the transfer in appropriate circumstances of certain classes of cases to the jurisdiction of the ordinary courts. The disposition provisions of the Act should be altered to indicate more specifically the powers of the juvenile court judge in juvenile traffic cases. The Act should also authorize the juvenile court judge, through rules of court, to make special arrangements (i.e., separate hearings by a designated officer, dispensing with written notice to parents, etc.) for dealing with more routine kinds of traffic cases (para. 154).
15. Conduct now variously described as incorrigibility, unmanageability, being beyond the control of a parent or guardian, or being in moral danger, should not be included within the offence provisions of the federal Act, but should be dealt with under provincial legislation. A procedure appropriate to this class of case might embody the following general principles:
  - (a) the proceeding should not be commenced by a charge against a child, as is now the case, but by a summons addressed to the parents requiring them to attend at the court and to bring the child with them;
  - (b) the terms "incorrigible" and "unmanageable" should be replaced by some more acceptable form of designation, such as a child or young person "in need of protection or discipline", or "in need of supervision";
  - (c) a standard should be adopted that indicates, without undue ambiguity, the considerations that are relevant to support court action and that gives fair indication of the conduct to which legal consequences attach;
  - (d) the legislation should provide that committal to a training school may be ordered only as a last resort;
  - (e) admission or committal to a training school should be possible only in the case of a child or young person committed pursuant to the federal Act or found, under the appropriate provincial legislation, to be "in need of protection or discipline" or "in need of

supervision", and not in the case of "neglected" or "dependent" children (para. 161).

16. The Juvenile court should be permitted to waive jurisdiction in favour of the adult court only where there is a specific finding that the young person concerned is not subject to committal to an institution for the mentally deficient or mentally ill, that he is not suitable for treatment in any available institution or facility designed for the care and treatment of young persons, or that the safety of the community requires that the offender continue under restraint for a period longer than the juvenile court is authorized to order. The decision whether or not to waive jurisdiction in the sense contemplated by the existing provisions of the Act should rest exclusively with the juvenile court judge (para. 168).
17. The law should also provide, by way of a supplemental procedure to the present provisions relating to waiver of jurisdiction, that a case can be referred from the juvenile court to the ordinary courts for trial and, on proof of the allegations against the young person, the case will then be remanded to the juvenile court for disposition. A young person charged with an offence, or the Crown, should have the right to insist upon trial in the ordinary courts under this new procedure (paras. 168, 169, 171).
18. The Act should be amended to remove the requirement that waiver of jurisdiction by the juvenile court is possible only where the alleged offence is indictable, and waiver of jurisdiction should be permitted in any case where the accused is over the age of 14 years and the allegation is one that would, if proved, support a finding that he is a young offender (para. 173).
19. The law should provide that when the juvenile court judge is satisfied on the evidence taken at the waiver hearing that there is a reasonably strong case against the young person, he may order any social investigation or medical, psychological or psychiatric examination that he feels is necessary or desirable (para. 174).
20. More adequate controls should be written into the waiver provisions of the law to guide and limit juvenile court judges in the exercise of their discretion concerning waiver. The legislation should provide specifically that
  - (a) waiver may be ordered only after a full investigation into the background of the accused and the circumstances of the offence;
  - (b) the juvenile court judge is required to give written reasons for his decision and to forward them to the criminal court with the order



transferring jurisdiction; and

- (c) notice of a waiver hearing must be served on the parent or guardian of the young person (para. 175).
- 21. The provision in the Act that permits a juvenile court judge to find a child delinquent, deal with him in any of the ways provided for by the disposition provisions of the Act, and subsequently, in the exercise of a supervisory jurisdiction continuing until the age of 21, causes him to be brought back before the court for further disposition, should be removed (para. 176).
- 22. Proposals for a procedure whereby offenders one year older than the upper age limit of juvenile court jurisdiction established under the Act might, in appropriate cases, be referred to the juvenile court by the ordinary criminal courts, should be studied with a view to adopting some such procedure as a means of achieving more flexibility in dealing with offenders who are only slightly over the juvenile age otherwise provided by law (para. 179).
- 23. Where a juvenile is subject to a finding that he is a child offender or a young offender the maximum period of institutional commitment should not exceed three years (para. 183).
- 24. The person in charge of any facility to which a juvenile has been committed should be required to submit annual reports to the committing judge on the youngster's progress and the plans being made for his release into the community (para. 184).
- 25. The juvenile court judge should have authority, in the case of any child who has been confined to an institution for a period of more than one year, not only to cause the child to be brought before the court but also, after considering the views of those responsible for the child's treatment and custody in an institution, to order the release of the child from the institution. The judge should have the power to act on his own motion and, in appropriate cases, upon the application of the child or his parents (para. 184).
- 26. Following release from an institution every young person should, as a matter of course, be subject to the jurisdiction of the juvenile court for a period of up to two years, during which time he may be required by the court to observe certain conditions and to report to a probation officer or other designated person (para. 186).
- 27. In no case should the juvenile court have the power to make an order affecting a young person beyond his twenty-first birthday (para. 186).

28. Legislation should provide that when the juvenile court judge considers that a particular offender no longer requires the supervision of the court he may discharge the young person, and that thereafter no further action may be taken in respect of the matter that has brought the young person within the jurisdiction of the court (para. 186).
29. In the case of any young person 17 years of age or over who is subject to the supervision of the juvenile court and who is in violation of a condition that he is required to observe, the court should have the power either to deal with the matter itself or to cause an appropriate charge to be laid against the offender in the ordinary criminal courts for violation of the condition (para. 187).
30. Juvenile law enforcement responsibilities of detection, apprehension and deterrence should be accomplished in such a way as not to compromise effective principles of rehabilitation or to neglect preventive functions (para. 194).
31. Police officers should not become involved in probation work or family case-work, nor should recreational programs be organized as an official part of the police operation (para. 194).
32. Where the police are authorized to exercise discretion in relation to juveniles, certain principles, as set out in paragraph 197, should be accepted in order to avoid the dangers of arbitrariness and lack of harmony between the goal sought by the legislator and the practices followed in administering the law (para. 197).
33. Where a child is to be questioned by the police - and particularly if he is to be invited to make a statement that may be used against him - a responsible adult who is concerned with protecting the child's interests should be present. No statement taken from a juvenile who does not have the benefit of adult advice should be admissible in evidence in any proceeding in the ordinary criminal courts, and any such statement should be received in evidence in the juvenile court only with the utmost caution (para. 199).
34. Police departments should be encouraged, where practicable, to establish juvenile details, but notwithstanding the establishment of such a specialized service, there should be one philosophy throughout the entire police department for dealing with juvenile offenders, and not one philosophy in the juvenile unit and a different one in other divisions (paras. 201, 204).
35. There is need for the increased training of every police officer in juvenile work and also for the development of specialized courses for

the training of specialists in juvenile work (para. 204).

36. The use of detention should be reserved for

- (a) children who are almost certain to run away during the period when the court is studying the case or between disposition and transfer to an institution or another jurisdiction;
- (b) children who are almost certain to commit an offence dangerous to themselves or to the community before the court disposition or between disposition and transfer to an institution or another jurisdiction; and
- (c) children who must be held for another jurisdiction, for example, parole violators, runaways from institutions to which they were committed by a court, or certain material witnesses (para. 209).

37. The law should make it clear that there is an obligation on the authorities to bring promptly before the court young persons who are being dealt with under federal legislation relating to juveniles (para. 211).

38. Canadian law should provide some means whereby the attendance of a child witness at trial in proceedings against an adult can be dispensed with, and his evidence be given by deposition, where attendance at court would involve serious danger to the life or health of the child (paras. 218, 219).

39. The youth examiner system, as introduced in 1955 into the law of Israel, should be studied with a view to determining whether some variant of this same concept – excluding features relating to evidence at trial – might profitably be adopted in Canada (para. 220).

40. The circuit juvenile court system should be studied with a view to introducing some such approach as a means of ensuring that juvenile court cases are dealt with by judges who are familiar with the specialized philosophy of the juvenile court (para. 223).

41. A juvenile court judge should ordinarily receive a specialized program of training, covering such matters as the principles of child psychology and personality development, the prevention and treatment of delinquent behaviour, juvenile court law and the rules of evidence, and the organization and administration of the juvenile court. Steps should be taken to make appropriate courses of training available to Canadian juvenile court judges (para. 226).

42. Juvenile court judges should continue to be appointed by the



appropriate provincial authorities, but should be selected only from names recommended by an advisory group consisting of representatives of such fields as education, law, medicine, psychology, religion and social work (para. 227).

43. The distinction drawn in the present Act between a judge and a deputy judge should be abolished (para. 228).
44. The function of the "juvenile court committee" should be clarified. The committee should serve principally as a liaison body between the juvenile court and the community, and also as one form of protection against improper practices in the juvenile court. Its purpose should be to provide continuous public education in the community in order to interpret the purpose and philosophy of the juvenile court, to stimulate the support necessary to enable the court to carry out its objectives, and to have general "watchdog" supervision of the court and the services upon which the court relies (para. 233).
45. Detailed provisions concerning the juvenile court committee, except as they relate to matters of procedure, should be removed from federal legislation and should be left to provincial legislatures to enact (para. 235).
46. It should be made clear in any revision of the Act that the ban on the identification of a child who may be the subject of proceedings under the Act by "any newspaper or other publication" extends also to radio and television. Legislation should provide also that the identification of a child is prohibited in any criminal proceedings involving a child, whether brought in the juvenile court or the adult court, where the proceedings arise out of an offence against, or conduct contrary to, decency or morality. The prohibition against identifying any such child should be reinforced by adequate penalty provisions under the law (paras. 241, 244).
47. Representatives of the news media should be permitted to attend juvenile court hearings as of right and, except where expressly prohibited by the judge, should be permitted to report the evidence adduced at the hearing, subject to the prohibition against identifying any child before the court, or any child said to have committed an offence (para. 244).
48. Members of the public should not be permitted to attend proceedings in a juvenile court, but the judge should be authorized to permit any member of the public to attend where he is satisfied that such a person has a bona fide reason to be present (para. 245).
49. There should be a crown attorney, or similar officer, in attendance in

proceedings in the juvenile court (para. 246).

50. The notice to a parent informing him of his child's appearance in court should contain a statement that the child is entitled to be represented by counsel (para. 249).
51. Study should be made, with a view to introduction in Canada, of a system of "law guardians", who could provide legal representation appropriate to the specialized nature of proceedings in the juvenile court. Under the system proposed, it would be the duty of the court to advise a juvenile of his right to retain counsel and of his right to have a law guardian provided at public expense if he is unable to obtain a lawyer (paras. 250, 251).
52. The procedure for giving notice to parents or guardians under the Act should be clarified and expanded. There should be a legal duty on the appropriate authorities to notify the parents or guardian of every step in a proceeding that may affect the child's liberty. Where the notice relates to an actual hearing in the juvenile court, whether for the purpose of dealing with a charge or for considering waiver of jurisdiction, the notice should be in writing. The juvenile court judge should be authorized to permit substituted service of notice where necessary, or to order in specified situations that notice be served on some other suitable relative or adviser, who would be entitled to appear at the hearing on the child's behalf (paras. 253, 254).
53. A set of standard forms should be provided in the Act, including a standard form of notice and a standard form of information (paras. 254, 258).
54. The Act should provide for the compulsory attendance of parents at a juvenile court hearing involving their child, subject to the power of the court to dispense with the attendance of one or both parents in special circumstances (paras. 255, 256).
55. The law in relation to the taking of pleas and to the privilege against self-incrimination in proceedings in the juvenile court should be clarified (para. 261).
56. Appropriate steps should be taken to provide more adequate guidance to juvenile court judges on matters of procedure than they now receive (para. 262).
57. The law should make adequate provision for a clear and simple method of proving the age of a child or young person who is before the juvenile court (para. 263).

58. The "non-judicial" practices of juvenile courts should be subject to precise legal controls. Informal disposition of cases should be permitted only where the police investigation indicates clearly that an offence has been committed, where the substance of the complaint is admitted by the child, and where the express consent of the parents is obtained. Efforts to effect an informal adjustment should be limited by law to a period of not more than two months (para. 269).
59. The Act should provide for the issuance of rules of court, subject to the approval of the Attorney General or other appropriate provincial officer, in respect of matters that fall within the ambit of federal jurisdiction, that is, matters relating essentially to the procedures that may be followed in dealing with a juvenile apprehended or charged in connection with an offence (para. 272).
60. The Crown and the accused should have a direct right of appeal to the court of appeal on any ground of appeal that involves a question of law alone and, with leave of the court of appeal, on any other ground that appears to the court to be sufficient (para. 275).
61. No judge should be authorized to commit a child to an institution or to authorize his removal from the home in any way without first having considered a pre-sentence report in respect of that child (para. 279).
62. All reports received by the court in relation to a child should be disclosed to the child's counsel; it will then be counsel's responsibility to decide how much of the information as disclosed therein should be revealed to the child or his parents. Where the child is represented by a person other than legal counsel that person, even if a parent, should be entitled to peruse the reports if he so requests (para. 283).
63. Where, after a hearing, it is necessary to detain a child for the purpose of determining the disposition that should be made of the case, the length of time that the child can be held for this purpose should be limited to three weeks and, if more time is required, an application should be made to the court for authority to detain the child for an additional period, not exceeding two weeks (para. 284).
64. The juvenile court judge should be given disposition powers under the Act sufficiently flexible to permit him, at any stage of proceeding, to perform a screening function in relation to the possible outcomes that may be considered desirable in any given case. In particular, it should be open to him to suspend further action on an information and, where appropriate, make an order under – and to the extent permitted by – provincial legislation relating to neglect or to the class of children designated as being "in need of supervision". To accomplish this result, the offence and disposition provisions under the Act should



be structured in such a way as to provide that a finding that the facts alleged have been proved does not lead automatically to an adjudication that a person is a child or young offender, or even that he has committed a "violation". It forms instead the basis for an investigation by the juvenile court into the circumstances of the case and the background of the offender, and following this, for some further order by the court. The alternatives available to the court would then be as follows: to proceed to a finding that the person is a child or young offender, or that he has committed a "violation", and to take any of the courses of action authorized under the Act that are predicated upon such a finding; to make an order as outlined in either of recommendations 65 or 66 below; or to direct that proceedings should be instituted under the appropriate provincial legislation in order that the child or young person may be dealt with instead - and, if possible, in the same proceeding - as being neglected or "in need of supervision" (paras. 286, 287).

65. New alternative methods of disposing of cases should be made available to juvenile court judges to permit them to accomplish, with proper legal sanction, the purposes for which the adjournment sine die procedure is, in fact, often being employed at the present time (para. 289).
66. Where the fact of a court appearance itself is all that is necessary to ensure that a child does not engage in further anti-social conduct the judge should be authorized to discharge the child without making a specific finding of delinquency (para. 290).
67. The law should provide that when the offence has been admitted, and when it is in the best interests of the child to do so, but before a finding of delinquency is entered, the court may order an adjournment of limited duration and may further direct, for the period of the adjournment, that the child or his parents should receive counselling, or that the child be placed under the supervision of a probation officer and, if the period of adjournment is concluded without further complications, the case may then be dismissed without a formal adjudication of delinquency being made (para. 292).
68. The principle of section 421 of the Criminal Code should apply in relation to juveniles; that is to say, where an accused is in custody in one province and has charges outstanding against him in another province he may, with the consent of the Attorney General of the latter province, admit the charges before a court in the province in which he is in custody (para. 293).
69. The maximum amount of a fine that may be imposed under the Act should be increased from twenty-five dollars to one hundred dollars,

except where the child offender is under fourteen years of age (para. 295).

70. There should be no power under the Act to order payment of court costs by a child or young person (para. 296).
71. The juvenile court should be authorized, in lieu of or in addition to any other disposition, to make an order of restitution against a juvenile offender in an amount not exceeding one hundred dollars, but power to make a restitution order should not apply in respect of a child who is under fourteen years of age (para. 299).
72. The following recommendations are made concerning probation services:
  - (a) each juvenile court should have available to it the services of at least one probation officer, and preferably as many as the burden of work requires;
  - (b) the probation officer should devote his full time to work involving juveniles;
  - (c) the probation officer should be responsible for pre-sentence investigation and for such personal supervision of a child or young person as may be directed by the court, and collateral duties should not be permitted to interfere with the proper performance of this primary function;
  - (d) probation officers should ordinarily have university education, should be adequately paid, and should receive the benefit of proper training for their duties;
  - (e) research should be undertaken to determine suitable caseloads for officers and proper criteria for the selection of offenders for probation (para. 303).
73. The law should make provision for the transfer of probation orders from one court to another and the legal effect of supervision should be clarified (para. 305).
74. The juvenile court should be the agency responsible for finding suitable foster homes, meeting prescribed standards, for those juvenile offenders who require them. At the same time, some means should be found whereby child-care agencies that receive assistance from government funds may be required by the court to assist it in its efforts to find foster homes. The court should consult any such agency before making an order that affects it (paras. 310, 311).

75. The expression "industrial school" should be replaced by the term "training school" (para. 312).
76. Institutional commitment should be ordered only as a last resort and the Act should be strengthened in order to give more adequate expression to this approach to the treatment of the juvenile offender (para. 313).
77. The provincial and federal governments should discuss jointly the development, staffing and operation of training schools, and the financial implications that would necessarily be involved (para. 323).
78. If it is decided that power to transfer an offender from a training school to a correctional institution for adults is necessary, the training school or other correctional authorities should be required to make application for a transfer to the juvenile court judge, who would be authorized to make the appropriate order (para. 326).
79. Every effort should be made to develop a network of services for the care of children who are psychotic, severely disturbed or mentally retarded (para. 330).
80. Steps should be taken to provide "group foster homes" where children, who must be taken out of their own homes, could derive benefit from a period of living in a small group in homelike surroundings under firm discipline (para. 331).
81. Every effort should be made to experiment with new approaches to the treatment of the juvenile offender, and in particular with measures that are community-based (para. 332).
82. After-care for young persons who have been committed to training schools should be compulsory and should be subject to the direction and control of the juvenile court. The responsibility for after-care supervision should preferably be assigned to the probation officer. Consideration should be given to making federal assistance available to any province that wishes to increase the staff of its probation service in order to implement a more adequate program of after-care (paras. 335, 336).
83. Some method should be found whereby the relevant provisions of the provincial legislation relating to the financial liability of parents and municipalities would come into effect whenever an order for support is made by the juvenile court pursuant to federal law (para. 339).
84. Employers who are subject to Parliament in respect of employment practices should be prohibited from questioning an applicant for



employment or his referees on the question whether he has been found delinquent during his childhood (para. 342).

85. Juvenile court records should be available for use in disposing of a case against an individual who, having a juvenile court record, is subsequently convicted of an offence in the adult court (para. 343).
86. Where proceedings in the juvenile court are concerned, it should be the policy of Canadian law to discourage the use of penal sanctions against parents except in circumstances where there is an obvious failure of parents to co-operate with the court. Section 22 of the Act, which relates to parental liability for offences committed by their children, should be replaced by new provisions that give expression to this altered conception of the proper basis for imposing legal responsibility upon a parent or guardian in respect of the conduct of a child under his charge (para. 356).
87. The offence of "contributing to delinquency" should be abolished and, to the extent that such a change in the law would leave situations for which penal sanctions are required, Parliament should make provision in the Criminal Code for one or more new offences defined with a degree of precision consistent with accepted principles of criminal jurisprudence (para. 365).
88. Section 157 of the Criminal Code, relating to conduct that endangers the morals of a child or renders the home an unfit place for the child to be in, should be amended with a view to limiting both its scope and the penalty that can be imposed (para. 366).
89. Federal legislation relating to juvenile and family court jurisdiction over offences committed by adults should be altered so as to permit certain less serious offences committed by adults, and involving family relationships, to be dealt with in the juvenile or family court. The basis for legislative change should be as follows:
  - (1) The juvenile or family court should have jurisdiction over certain designated offences committed in circumstances where
    - (a) a child is the victim of an offence and there is a continuing relationship between the child and the adult charged, or
    - (b) the offence has been committed by one member of a family or household against another and a child is substantially affected by the proceedings.
  - (2) The juvenile or family court should, so far as practicable, have exclusive original jurisdiction in the situations designated.

- (3) The accused should be entitled to an election as to whether he wishes to be tried by the juvenile or family court or to have the matter transferred to the ordinary criminal courts. The juvenile or family court should also have the power to transfer any case to the ordinary criminal courts.
  - (4) The Criminal Code should be reviewed to determine what offences might, in the circumstances suggested, appropriately be dealt with in the juvenile or family court.
  - (5) The juvenile or family court should have the power to dispose of appropriate cases by entering an order for the absolute or conditional discharge of an offender (para. 373).
- 90. Study should be given to schemes, already adopted in other jurisdictions, whereby problems of family relationships are kept out of the ordinary criminal courts (para. 374).
  - 91. There should be a systematic and studied attempt to devise programs in Canada designed to meet the need for a more intensive and organized concentration on measures designed to prevent delinquency (para. 378).
  - 92. Efforts to promote the study of the family and to support the parental function in the proper upbringing of children should receive every possible encouragement (paras. 380, 381, 383).
  - 93. Every effort should be made to assist the schools in the discharge of those aspects of their work that have a bearing upon delinquency prevention. In particular, there is in many parts of Canada a need to strengthen pupil personnel services in the schools (i.e., individualized services rendered to pupils, teachers and parents by qualified personnel, such as counsellors, attendance officers, psychologists, visiting teachers and school social workers) and to make more readily available to the schools the services provided by child guidance or mental health clinics. The federal government should explore with the provinces the extent to which federal assistance might properly be made available in relation to one or more of these strategically important points of attack on the problem of delinquency (para. 397).
  - 94. The special services offered to youth by the National Employment Service should be expanded (para. 404).
  - 95. The federal program for providing financial assistance for the training of professionals in the mental health and welfare fields should be reviewed to determine whether it is adequate to attract qualified persons to the types of work where they are most needed and in the

numbers that are required (para. 409).

96. The importance of fusing the processes of social inquiry and policy-making should be recognized. In furtherance of this objective, the following are required:
- (a) periodic and, if possible, regular evaluations of the achievements of all programs and services that relate to delinquency prevention and control;
  - (b) a central clearing-house for information on research projects and their reported results, including periodic efforts at critical appraisal;
  - (c) new methods of improving channels of communication and for promulgating and using new as well as existing information on juvenile delinquency;
  - (d) studies of the prevalence, distribution and kinds of delinquency;
  - (e) the programming of "demonstration projects" as a means of testing novel and promising services, the general applicability and value of which can be assessed as part of the project design itself (para. 425).
97. The federal government, through the Department of Justice, should take the lead, as recommended by the Fauteux Committee, in encouraging and supporting research on crime and on the programs which seek to control crime (para. 427).
98. There should be established, in the Department of Justice, a Youth and Delinquency Research and Advisory Centre which would serve as a research and co-ordinating agency, and which would also provide consultative and advisory services that would be available to assist individuals or agencies engaged in the various specialized activities that are concerned with delinquency prevention or control (paras. 429, 430).
99. The federal government should discuss with provincial authorities the possibility of federal funds being allocated for a number of demonstration projects relating to various aspects of delinquency prevention and control (para. 431).
100. There should be an appropriation of federal funds to establish workshops, institutes and seminars as part of a staff training program in the field of juvenile delinquency (para. 432).



All of which we respectfully submit for your  
consideration.

ALLEN J. MACLEOD

L. PHILIPPE GENDREAU

MARY LOU LYNCH

RONALD R. PRICE

EDWIN W. WILLES



## CHAPTER XV

### APPENDICES

#### APPENDIX "A"

##### INSTITUTIONS VISITED

Brannan Lake School for Boys, Wellington, B.C.  
Oakalla Prison Farm, South Burnaby, B.C.  
Haney Correctional Institution, Haney, B.C.  
Willingdon School for Girls, North Burnaby, B.C.  
New Haven Borstal Institution, New Haven, B.C.  
Our Lady of Charity Training School, Edmonton, Alta.  
Alberta Institution for Girls, North Edmonton, Alta.  
Saskatchewan Boys' School, Regina, Sask.  
Manitoba Home for Girls, Winnipeg, Man.  
Marymound School (The Home of the Good Shepherd), Winnipeg, Man.  
Sir Hugh John MacDonald Hostel, Winnipeg, Man.  
Ontario Training School for Boys, Bowmanville, Ont.  
Ontario Training School for Boys, Cobourg, Ont.  
Ontario Training School for Boys, Guelph, Ont.  
Ontario Training School for Girls, Galt, Ont.  
Reception and Diagnostic Centre, Ontario Training School for Girls,  
Galt, Ont.  
Ontario Training School for Girls, "Trelawney House",  
Port Bolster, Ont.  
St. John's Training School, Uxbridge, Ont.  
St. Joseph's Training School, Alfred, Ont.  
Boscoville, Riviere des Prairies, P.Q.  
Maison Notre-Dame de la Garde, Cap Rouge, P.Q.  
Manoir Charles-dé-Foucauld, Giffard, P.Q.  
The Boys' Industrial Home, East Saint John, N.B.  
Nova Scotia Home for Boys, Shelburne, N.S.  
St. Euphrasia's School (Good Shepherd Industrial Refuge), Halifax, N.S.  
Boys' Home and Training School, Whitbourne, Nfld.  
Girls' Home and Training School, St. John's, Nfld.



## APPENDIX "B"

### JUVENILE AND FAMILY COURT SITTINGS ATTENDED

Victoria Juvenile and Family Court  
Regina Juvenile and Family Court  
Winnipeg Juvenile and Family Court  
Metropolitan Toronto Juvenile and Family Court  
London Juvenile and Family Court  
Ottawa Juvenile and Family Court  
Social Welfare Court of Montreal  
St. John's Juvenile and Family Court

### DETENTION CENTRES VISITED

Victoria, B.C.  
Vancouver, B.C.  
Calgary, Alta.  
Winnipeg, Man.  
Toronto, Ont.  
Montreal, P.Q.  
Quebec City, P.Q.

## APPENDIX "C"

### BRIEFS SUBMITTED TO THE COMMITTEE

#### CANADA

Boys' Clubs of Canada (January, 1963)  
Canadian Association of Social Workers (October, 1962)  
Canadian Corrections Association (January, 1963)  
Canadian National Conference of Training School Superintendents  
(October, 1962)  
National Council of Women of Canada (January, 1963)  
Young Women's Christian Association of Canada (October, 1962)

#### ALBERTA

Alberta Federation of Home and School Associations (May, 1962)  
Christian Reformed Church, Classis Alberta North  
Council of Community Services of Greater Edmonton (April, 1962)  
Edmonton Diocesan Council for Social Service (Anglican)

## ALBERTA - (cont'd)

Edmonton Family Service Bureau (April, 1962)  
Edmonton Public School Board (May, 1962)  
Joint Submission of Family Service Bureau and  
Catholic Family Service, Calgary (March, 1962)  
John Howard Society of Alberta (March, 1962)  
"K" Division, R.C.M. Police (March, 1962)

## BRITISH COLUMBIA

Air Marshal Sir Philips C. Livingston, K.B.E., C.B., A.F.C., F.R.C.S.  
(May, 1962)  
Big Brothers of British Columbia (May, 1962)  
B.C. Conference of the United Church of Canada  
B.C. Corrections Association, Haney, B.C. (May, 1962)  
B.C. Parent-Teachers Association (May, 1962)  
Chilliwack Juvenile Court Committee  
Community Chest and Council of Greater Vancouver  
Community Welfare Council of Greater Victoria  
James Pierce Carleton, New Westminster (September, 1962)  
John Howard Society of British Columbia (May, 1962)  
John Howard Society of Vancouver Island (May, 1962)  
Judge M.E. Ferguson, Juvenile Court, University Area, Vancouver  
Judge A.D. Pool, Juvenile Court, North Vancouver  
Okanagan Valley Group - Joint Submission by Committees of Communities  
of Penticton, Kelowna and Vernon  
University of British Columbia - School of Social Work (May, 1962)  
University of British Columbia - Department of Psychiatry (Dr. Tyhurst)  
(May, 1962)  
Vancouver Police Department (May, 1962)  
Y.M.C.A. of Greater Vancouver

## MANITOBA

Child Guidance Clinic of Greater Winnipeg (February, 1962)  
Judges of the Winnipeg Juvenile and Family Court  
"D" Division, R.C.M. Police, Winnipeg  
John Howard and Elizabeth Fry Society of Manitoba

## NEW BRUNSWICK

Canadian Mental Health Association - New Brunswick Division (April, 1962)  
Children's Aid Society of Westmorland County (April, 1962)  
"J" Division, R.C.M. Police, Fredericton  
John Howard Society of New Brunswick, Saint John

## NEWFOUNDLAND

"B" Division, R.C.M. Police, St. John's (June, 1962)

## NOVA SCOTIA

Committee on Evangelism and Social Service, United Church of Canada,  
Halifax

Department of Public Welfare (April, 1962)

"H" Division, R.C.M. Police, Halifax

Halifax Welfare Council (March, 1962)

Maritime School of Social Work

Nova Scotia Association of Children's Aid Societies (April, 1962)

Sisters of the Good Shepherd, St. Euphrasia's School, Halifax (April, 1962)

## ONTARIO

Association of Juvenile and Family Court Judges of Ontario (October, 1962)

Community Fund and Welfare Council of Greater Windsor (November, 1962)

Juvenile Court Committee, City of St. Catharines and County of Lincoln  
(October, 1962)

Kingston University Women's Club

Lakehead Study Committee (1962)

Ontario Association of Children's Aid Societies (December, 1962)

Ontario Probation Officers' Association

Ontario Welfare Council

Rotary Club of Toronto

Salvation Army, London

Salvation Army, Toronto (December, 1962)

Social Planning Council of Hamilton and District (October, 1962)

Social Planning Council of Metropolitan Toronto (September, 1962)

Toronto Inter-Settlement House Committee (1962)

United Community Services, London (November, 1962)

Victoria Day Nursery, Toronto (December, 1962)

Willowdale Boys Outdoors Club, Toronto (December, 1962)

Windsor Y.M.C.A. - Y.W.C.A. (November, 1962)

## PRINCE EDWARD ISLAND

"L" Division, R.C.M. Police, Charlottetown (April, 1962)

## QUEBEC

Conseil des Oeuvres de Montreal, Montreal (February, 1963)

Corporation des Travailleurs Sociaux Professionnels de la Province de Quebec  
sur la delinquance juvenile (January, 1963)



QUEBEC - (cont'd)

Services de Protection de la Jeunesse (Ministere de la Famille et du  
Bien Etre Social)

Study Committee on Juvenile Delinquency of The Department of Psychiatry,  
University of Montreal (May, 1963)

University of Montreal - Department of Criminology.

SASKATCHEWAN

Department of Social Welfare and Rehabilitation

John Howard Society at Saskatchewan

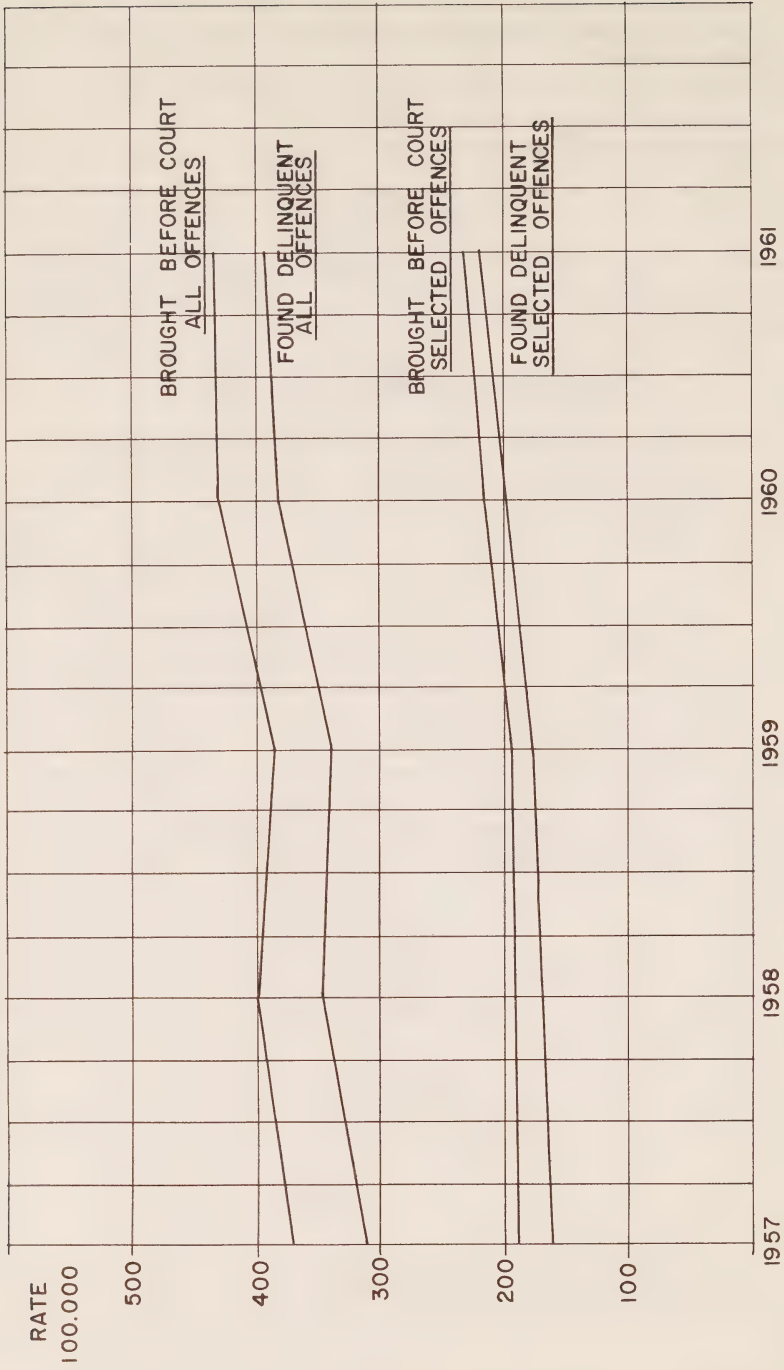
Regina Welfare Council

YUKON and NORTHWEST TERRITORIES

"G" Division, R.C.M. Police, Yukon and Northwest Territories

# APPENDIX "D"

JUVENILES 7-15 YEARS OF AGE BROUGHT TO COURT AND FOUND DELINQUENT (1957-1961)



Juveniles 7-15 years of age brought to court and found delinquent - 1957-1961

TABLE 2

Selected offences include: assault causing bodily harm; assault on peace officer and obstructing; murder, manslaughter, and murder attempt; breaking and entering; robbery; false pretences; theft; forgery and uttering.

Canada

		All Offences				Selected Offences							
		Brought Before Court		Found Delinquent		Brought Before Court		Found Delinquent					
		T	M	F	T	M	F	T	M	F	T	M	F
1957													
No.		10620	9303	1317	8811	7714	1097	5425	5111	314	4584	4309	275
Rate/100,000		371	638	94	308	529	78	190	350	22	160	295	20
1958													
No.		11766	10320	1446	10307	9067	1240	5722	5350	372	5044	4726	318
Rate		394	677	99	345	595	85	192	351	25	169	310	22
1959													
No.		11986	10599	1387	10608	9407	1201	5996	5641	355	5383	5091	292
Rate		387	669	91	342	594	79	193	356	23	174	322	19
1960													
No.		13969	12277	1692	12331	10879	1452	7375	6897	478	6469	6076	393
Rate		460	747	108	383	662	92	229	420	30	201	370	25
1961													
No.		14804	13050	1754	13357	11794	1563	7993	7461	532	7500	7009	491
Rate		435	750	105	392	678	94	235	429	32	220	403	30



TABLE 2(a)

## Newfoundland

	All Offences						Selected Offences					
	Brought Before Court			Found Delinquent			Brought Before Court			Found Delinquent		
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No. Rate/100,000	277	256	21	266	246	20	201	186	15	192	178	14
1958 - No. Rate	296	557	44	284	535	42	215	404	32	205	387	29
1959 - No. Rate	287	267	20	281	261	20	227	214	13	225	212	13
1960 - No. Rate	303	562	42	297	549	42	240	451	28	238	446	28
1961 - No. Rate	229	214	15	221	208	13	130	122	8	128	121	7
1962 - No. Rate	234	434	31	226	422	27	133	247	16	131	245	14
1963 - No. Rate	328	305	23	318	295	23	254	235	19	247	228	19
1964 - No. Rate	324	598	46	315	578	46	251	461	38	244	447	38
1965 - No. Rate	344	325	19	333	314	19	255	245	10	252	242	10
1966 - No. Rate	319	593	36	308	573	36	236	447	19	233	441	19

TABLE 2(b)

## Prince Edward Island

	All Offences						Selected Offences					
	Brought Before Court			Found Delinquent			Brought Before Court			Found Delinquent		
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No. Rate/100,000	34	34	-	33	33	-	26	26	-	25	25	-
1958 - No. Rate	175	343	-	170	333	-	134	263	-	129	253	-
1959 - No. Rate	24	24	-	23	23	-	11	11	-	11	11	-
1960 - No. Rate	122	240	-	117	230	-	56	110	-	56	110	-
1961 - No. Rate	39	36	3	39	36	3	25	23	2	25	23	2
1962 - No. Rate	191	343	30	191	343	30	123	219	20	123	219	20
1963 - No. Rate	35	34	1	35	34	1	24	24	-	24	24	-
1964 - No. Rate	169	318	10	169	318	10	116	224	-	116	224	-
1965 - No. Rate	50	50	-	50	50	-	24	24	-	24	24	-
1966 - No. Rate	230	453	-	230	453	-	111	218	-	111	218	-

## Nova Scotia

TABLE 2(c)

		All Offences						Selected Offences					
		Brought Before Court			Found Delinquent			Brought Before Court			Found Delinquent		
		T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.		529	485	44	456	419	37	299	283	16	268	254	14
Rate/100,000		405	728	69	349	629	58	229	425	25	205	381	22
1958 - No.		701	636	65	615	565	50	356	338	18	328	312	16
Rate		525	934	100	461	830	77	267	496	28	246	458	24
1959 - No.		664	605	59	578	532	46	408	377	31	370	348	22
Rate		488	872	89	425	767	69	300	543	47	272	501	33
1960 - No.		703	631	72	616	554	62	397	370	27	350	326	24
Rate		507	889	106	444	780	92	286	521	40	252	459	35
1961 - No.		573	531	42	504	467	37	323	313	10	292	283	9
Rate		395	715	59	347	629	52	223	421	14	201	381	13

## New Brunswick

TABLE 2(d)

		All Offences						Selected Offences					
		Brought Before Court			Found Delinquent			Brought Before Court			Found Delinquent		
		T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.		312	287	25	299	276	23	170	165	5	167	162	5
Rate/100,000		271	490	44	260	471	41	148	282	9	145	276	9
1958 - No.		416	360	56	395	345	50	181	176	5	176	161	5
Rate		353	600	97	336	575	87	154	293	9	150	285	9
1959 - No.		318	299	19	306	288	18	191	187	4	182	179	3
Rate		261	482	32	251	465	30	157	302	7	150	289	5
1960 - No.		423	367	56	412	359	53	238	225	13	231	219	12
Rate		339	574	92	330	562	87	191	352	21	185	343	20
1961 - No.		457	426	31	442	413	29	291	277	14	283	271	12
Rate		350	640	48	338	621	45	223	416	22	217	407	19

TABLE 2(e)

## Quebec

All Offences				Selected Offences			
Brought Before Court		Found Delinquent		Brought Before Court		Found Delinquent	
T	M	F	T	M	F	T	M

1957 - No.

Rate/100,000

1958 - No.

Rate

1959 - No.

Rate

1960 - No.

Rate

1961 - No.

Rate

2075	1862	213	1221	1075	146	1012	967	45	603	576	27
229	404	48	135	233	32	112	210	10	67	125	6
2119	1886	233	1952	1730	222	981	942	39	891	853	38
227	397	51	209	365	48	105	199	9	96	180	8
2108	1863	245	2037	1803	234	1106	1061	45	1087	1043	44
219	381	52	212	368	50	115	217	10	113	213	9
2359	2108	251	2285	2045	240	1240	1196	44	1209	1166	43
238	418	52	231	406	49	125	237	9	122	231	9
2656	2400	256	2388	2153	235	1309	1249	60	1232	1173	59
256	453	50	230	406	46	126	236	12	119	221	12

TABLE 2(f)

## Ontario

Brought Before Court		Found Delinquent		Brought Before Court		Found Delinquent	
T	M	F	T	M	F	T	M

1957 - No.

Rate/100,000

1958 - No.

Rate

1959 - No.

Rate

1960 - No.

Rate

1961 - No.

Rate

4364	3753	611	3694	3174	520	2338	2206	132	2010	1889	121
498	838	143	422	709	121	267	493	31	229	422	28
4744	4103	641	3775	3278	497	2351	2188	163	1879	1765	114
511	864	141	407	691	109	253	461	36	202	372	25
4744	4111	633	3786	3270	516	2368	2227	141	1941	1840	101
488	827	133	390	658	109	244	448	30	200	370	21
5885	5086	799	4802	4141	661	3056	2832	224	2538	2365	173
578	978	161	472	796	133	300	544	45	249	455	35
6733	5851	882	6019	5230	789	3674	3402	272	3385	3139	246
618	1048	166	553	937	149	337	610	51	311	562	46



TABLE 2(g)

## Manitoba

	All Offences						Selected Offences					
	Brought Before Court			Found Delinquent			Brought Before Court			Found Delinquent		
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.	710	606	104	640	553	87	199	186	13	178	165	13
Rate/100,000	496	826	149	447	753	125	139	253	19	124	225	19
1958 - No.	816	713	103	727	640	87	302	288	14	277	263	14
Rate	551	938	143	491	842	121	204	379	19	187	346	19
1959 - No.	881	790	91	757	689	68	290	281	9	238	231	7
Rate	574	1003	122	493	875	91	189	357	12	155	294	9
1960 - No.	1044	894	150	903	784	119	437	406	31	280	250	30
Rate	658	1101	194	569	966	154	276	500	40	177	308	39
1961 - No.	804	657	147	608	511	97	362	341	21	271	258	13
Rate	482	771	179	364	600	119	217	400	26	162	303	16

TABLE 2(h)

## Saskatchewan

All Offences				Selected Offences								
Brought Before Court		Found Delinquent		Brought Before Court		Found Delinquent						
T	M	F	T	M	F	T	M	F				
1957 - No.	29	29	-	26	26	-	20	20	-	18	18	-
Rate/100,000	19	37	-	17	33	-	13	26	-	12	23	-
1958 - No.	80	71	9	79	70	9	61	52	9	60	51	9
Rate	51	88	12	50	86	12	39	64	12	39	63	12
1959 - No.	190	174	16	174	163	11	148	135	13	135	127	8
Rate	116	206	20	106	194	14	90	160	16	82	151	10
1960 - No.	264	249	15	224	212	12	180	170	10	158	150	8
Rate	158	290	18	134	247	15	108	198	12	94	175	10
1961 - No.	296	281	15	233	219	14	232	219	13	189	176	13
Rate	170	317	18	134	247	16	134	247	15	109	198	15

TABLE 2(i)

## Alberta

All Offences				Selected Offences			
Brought Before Court		Found Delinquent		Brought Before Court		Found Delinquent	
T	M	F	T	M	F	T	M
1957 - No. Rate/100,000	757	657	100	706	622	84	412
1958 - No. Rate	387	656	105	361	621	88	211
1959 - No. Rate	881	751	130	814	692	122	439
1960 - No. Rate	424	704	128	392	649	120	211
1961 - No. Rate	875	762	113	819	718	101	403
	400	678	106	374	639	95	202
	1060	913	147	920	807	113	596
	459	771	131	399	682	101	258
	1168	996	172	1101	945	156	593
	477	794	144	450	754	130	242

TABLE 2(j)

## British Columbia

All Offences				Selected Offences			
Brought Before Court		Found Delinquent		Brought Before Court		Found Delinquent	
T	M	F	T	M	F	T	M
1957 - No. Rate/100,000	1529	1331	198	1466	1287	179	744
1958 - No. Rate	678	1159	179	650	1121	162	330
1959 - No. Rate	1688	1499	189	1636	1453	183	808
1960 - No. Rate	704	1223	161	682	1185	156	337
1961 - No. Rate	1905	1712	193	1858	1667	191	868
	764	1346	158	746	1311	157	348
	1868	1690	178	1816	1648	168	953
	717	1270	140	697	1238	132	366
	1721	1531	190	1677	1490	187	928
	621	1081	140	605	1051	138	335

	All Offences						Selected Offences					
	Brought Before Court			Found Delinquent			Brought Before Court			Found Delinquent		
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No. Rate/100,000	4	3	1	4	3	1	4	3	1	4	3	1
1958 - No. Rate	82	115	43	82	115	43	82	115	43	82	115	43
1959 - No. Rate	10	10	-	10	10	-	5	5	-	5	5	-
1960 - No. Rate	175	345	-	175	345	-	88	172	-	88	172	-
1961 - No. Rate	33	33	-	33	33	-	21	21	-	21	21	-
1962 - No. Rate	541	1100	-	541	1100	-	344	700	-	344	700	-
1963 - No. Rate	-	-	-	-	-	-	-	-	-	-	-	-
1964 - No. Rate	-	-	-	-	-	-	-	-	-	-	-	-
1965 - No. Rate	2	2	-	2	2	-	2	2	-	2	2	-
1966 - No. Rate	294	600	-	294	600	-	294	600	-	294	600	-



## Disposition for Juveniles 7 to 15 Years of Age Brought Before the Court, 1957 - 1961

		Found Delinquent									
		Total	Dismissal	Adj. Sine Die	Total	Fine or Rest.	Repri- manded	Probation to		Training School	Other
								Court	Parents		
1957	T	10620	271	1538	8811	2060	438	3368	264	1508	1173
	M	9303	236	1353	7714	1928	394	2926	236	1170	1060
	F	1317	35	185	1097	132	44	442	28	338	113
1958	T	11766	364	1095	10307	1503	457	5060	263	1704	1320
	M	10320	311	942	9067	1427	400	4443	221	1348	1228
	F	1446	53	153	1240	76	57	617	42	356	92
1959	T	11986	325	1053	10608	1747	300	5321	368	1590	1282
	M	10599	289	903	9407	1689	275	4710	313	1239	1181
	F	1387	36	150	1201	57	25	611	55	351	101
1960	T	13969	427	1211	12331	2045	405	6378	462	1696	1345
	M	12277	372	1026	10879	1947	359	5631	401	1323	1218
	F	1692	55	185	1452	98	46	747	61	373	127
1961	T	14804	466	981	13357	1912	472	6355	589	1860	2169
	M	13050	420	836	11794	1779	424	5681	531	1458	1921
	F	1754	46	145	1563	133	48	674	58	402	248

TABLE 3(a)

## Newfoundland

## Found Delinquent

	Adj. Sine Die	Dismissal	Total	Total	Fine or Rest.	Repr- mand	Probation to			Training	
							Total	Court	Parents	School	Other
1957	T	7	277	266	57	1	98	3	15	92	
	M	7	256	246	54	1	86	3	14	88	
	F	-	21	20	3	-	12	-	1	4	
1958	T	6	287	281	50	2	74	1	28	126	
	M	6	267	261	45	2	65	1	28	120	
	F	-	20	20	5	-	9	-	-	6	
1959	T	7	229	221	29	1	76	2	18	95	
	M	5	214	208	29	1	71	2	16	89	
	F	2	15	13	-	-	5	-	2	6	
1960	T	10	328	318	87	-	108	-	15	108	
	M	10	305	295	82	-	103	-	10	100	
	F	-	23	23	5	-	5	-	5	8	
1961	T	9	344	333	69	-	105	6	15	138	
	M	9	325	314	66	-	100	6	14	128	
	F	-	19	19	3	-	5	-	1	10	
TABLE 3(b)											
1957	T	-	34	33	1	-	9	16	4	3	
	M	-	34	33	1	-	9	16	4	3	
	F	-	-	-	-	-	-	-	-	-	
1958	T	-	24	23	-	5	2	15	1	-	
	M	-	24	23	-	5	2	15	1	-	
	F	-	-	-	-	-	-	-	-	-	
1959	T	-	39	39	-	-	8	27	3	1	
	M	-	36	36	-	-	8	24	3	1	
	F	-	3	3	-	-	-	3	-	-	
1960	T	-	35	35	3	1	15	13	1	2	
	M	-	34	34	2	1	15	13	1	2	
	F	-	1	1	1	-	-	-	-	-	
1961	T	-	50	50	10	-	7	27	3	3	
	M	-	50	50	10	-	7	27	3	3	
	F	-	-	-	-	-	-	-	-	-	

TABLE 3(c)

## Nova Scotia

## Found Delinquent

	Total	Dismissal	Adj. Sine Die	Total	Fine or Rest.	Repri- manded	Probation to			Training School	Other
							Court	Parents	Other		
1957	529	24	49	456	61	63	141	-	124	67	
	485	22	44	419	60	55	131	-	109	64	
	44	2	5	37	1	8	10	-	15	3	
1958	701	28	58	615	40	98	212	-	143	122	
	636	23	48	565	39	91	196	-	124	115	
	65	5	10	50	1	7	16	-	19	7	
1959	664	24	62	578	106	3	184	1	157	127	
	605	17	56	532	102	3	167	1	137	122	
	59	7	6	46	4	-	17	-	20	5	
1960	703	15	72	616	33	6	278	7	142	150	
	631	12	65	554	31	3	248	6	126	140	
	72	3	7	62	2	3	30	1	16	10	
1961	573	21	48	504	63	13	233	23	112	60	
	531	18	46	467	57	13	218	21	99	59	
	42	3	2	37	6	-	15	2	13	1	
				New Brunswick							
1957	312	8	5	299	78	17	111	16	39	38	
	287	7	4	276	74	14	102	16	36	34	
	25	1	1	23	4	3	9	-	3	4	
1958	416	17	4	395	37	66	114	4	72	102	
	360	11	4	345	33	42	99	4	66	101	
	56	6	-	50	4	24	15	-	6	1	
1959	318	7	5	306	27	35	126	13	49	56	
	299	7	4	288	26	25	121	13	48	55	
	19	-	1	18	1	10	5	-	1	1	
1960	423	6	5	412	53	73	169	-	67	50	
	367	6	2	359	49	52	153	-	58	47	
	56	-	3	53	4	21	16	-	9	3	
1961	457	6	9	442	57	43	212	10	85	35	
	426	5	8	413	54	42	196	10	78	33	
	31	1	1	29	3	1	16	-	7	2	

TABLE 3(d)



TABLE 3(e)

## Quebec

Found Delinquent													
		Adj. Sine	Dismissal	Total	Die	Total	Fine or Rest.	Reprimanded	Probation to			Training	
									Court	Parents	School	Other	
1957	T	2075	45		809	1221	259	26	248	107	236	345	
	M	1862	43		744	1075	249	24	212	93	182	315	
	F	213	2		65	146	10	2	36	14	54	30	
1958	T	2119	24		143	1952	303	30	1096	84	282	157	
	M	1886	21		135	1730	298	30	964	70	218	150	
	F	233	3		8	222	5	-	132	14	64	8	
1959	T	2108	22		49	2037	277	3	1143	129	366	119	
	M	1863	19		41	1803	268	2	1027	108	281	117	
	F	245	3		8	234	9	1	116	21	85	2	
1960	T	2359	29		45	2285	429	38	1284	157	209	168	
	M	2108	26		37	2045	418	36	1148	140	147	156	
	F	251	3		8	240	11	2	136	17	62	12	
1961	T	2656	15		253	2388	380	146	1194	243	304	121	
	M	2400	11		236	2153	368	131	1088	212	242	112	
	F	256	4		17	235	12	15	106	31	62	9	

TABLE 3(f)

## Ontario

1957	T	4364	157	513	3694	890	117	1606	47	694	340		
	M	3753	134	445	3174	860	106	1363	39	504	302		
	F	611	23	68	520	30	11	243	8	190	38		
1958	T	4744	252	717	3775	457	47	1929	66	748	528		
	M	4103	219	606	3278	436	38	1707	51	562	484		
	F	641	33	111	497	21	9	222	15	186	44		
1959	T	4744	229	729	3786	429	42	2138	60	682	429		
	M	4111	211	630	3270	420	40	1885	49	486	385		
	F	633	18	99	516	9	2	253	11	196	44		
1960	T	5885	291	792	4802	649	66	2557	155	855	520		
	M	5086	253	692	4141	613	64	2216	127	661	460		
	F	799	38	100	661	36	2	341	28	194	60		
1961	T	6733	376	338	6019	679	94	2741	117	921	1467		
	M	5851	342	279	5230	624	89	2440	105	689	1283		
	F	882	34	59	789	55	5	301	12	232	184		

TABLE 3(g)

		Manitoba		Found Delinquent							TABLE 3(g)	
		Adj. Sine Die	Dismissal	Total	Total	Fine or Rest.	Repri- manded	Probation to			Training	
								Court	Parents	School	Other	
1957	T	710	4	66	640	311	130	70	3	109	17	
	M	606	4	49	553	290	119	54	3	75	12	
	F	104	-	17	87	21	11	16	-	34	5	
1958	T	816	2	87	727	246	129	213	6	112	21	
	M	713	2	71	640	233	118	190	3	77	19	
	F	103	-	16	87	13	11	23	3	35	2	
1959	T	881	35	121	757	371	126	105	15	94	46	
	M	790	35	98	689	364	117	85	8	72	43	
	F	91	-	23	68	7	9	20	7	22	3	
1960	T	1044	6	135	903	285	127	277	3	166	45	
	M	894	5	105	784	276	114	234	3	116	41	
	F	150	1	30	119	9	13	43	-	50	4	
1961	T	804	3	193	608	134	92	268	4	91	19	
	M	657	1	145	511	126	79	232	2	55	17	
	F	147	2	48	97	8	13	36	2	36	2	
Saskatchewan												
1957	T	29	2	1	26	-	-	4	8	14	-	
	M	29	2	1	26	-	-	4	8	14	-	
	F	-	-	-	-	-	-	-	-	-	-	
1958	T	80	-	1	79	-	-	17	26	35	1	
	M	71	-	1	70	-	-	12	24	33	1	
	F	9	-	-	9	-	-	5	2	1	-	
1959	T	190	15	1	174	-	-	39	58	11	66	
	M	174	10	1	163	-	-	36	54	11	62	
	F	16	5	-	11	-	-	3	4	-	4	
1960	T	264	38	2	224	1	-	148	64	10	1	
	M	249	35	2	212	1	-	142	58	10	1	
	F	15	3	-	12	-	-	6	6	-	-	
1961	T	296	23	40	233	3	2	73	144	8	3	
	M	281	22	40	219	3	2	67	136	8	3	
	F	15	1	-	14	-	-	6	8	-	-	

Alberta

TABLE 3(i)

		Found Delinquent											
		Adj. Sine		Fine or Rest.		Reprimanded		Court		Probation to		Training	
		Total	Dismissal	Total	Total	Total	Total	Total	Total	Parents	School	Other	Other
1957	T	757	5	46	706	89	78	399	13	84	43		
	M	657	3	32	622	82	70	354	12	63	41		
	F	100	2	14	84	7	8	45	1	21	2		
1958	T	881	13	54	814	86	66	554	20	79	9		
	M	751	11	48	692	84	62	466	17	56	7		
	F	130	2	6	122	2	4	88	3	23	2		
1959	T	875	1	55	819	57	62	672	18	8	2		
	M	762	1	43	718	56	60	579	14	7	2		
	F	113	-	12	101	1	2	93	4	1	-		
1960	T	1060	13	127	920	110	55	732	15	6	2		
	M	913	9	97	807	104	53	628	15	5	2		
	F	147	4	30	113	6	2	104	-	1	-		
1961	T	1168	2	65	1101	189	66	726	3	110	7		
	M	996	1	50	945	169	56	628	1	84	7		
	F	172	1	15	156	20	10	98	2	26	-		
British Columbia													
1957	T	1529	19	44	1466	314	6	679	50	189	228		
	M	1331	14	30	1287	258	5	608	46	169	201		
	F	198	5	14	179	56	1	71	4	20	27		
1958	T	1688	22	30	1636	284	14	849	36	199	254		
	M	1499	18	28	1453	259	12	742	31	178	231		
	F	189	4	2	183	25	2	107	5	21	23		
1959	T	1905	17	30	1858	436	28	829	45	201	319		
	M	1712	16	29	1667	409	27	730	40	177	284		
	F	193	1	1	191	27	1	99	5	24	35		
1960	T	1868	19	33	1816	395	39	810	48	225	299		
	M	1690	16	26	1648	371	36	744	39	189	269		
	F	178	3	7	168	24	3	66	9	36	30		
1961	T	1721	11	33	1677	328	16	796	12	211	314		
	M	1531	11	30	1490	302	12	705	11	186	274		
	F	190	-	3	187	26	4	91	1	25	40		

TABLE 3(j)



		Found Delinquent									
		Total	Dismissal	Adj. Sine Die	Total	Fine or Rest.	Repri- mand	Probation to		Training School	Other
								Court	Parents		
1957	T	4	-	-	4	-	-	3	1	-	-
	M	3	-	-	3	-	-	3	-	-	-
	F	1	-	-	1	-	-	-	1	-	-
1958	T	10	-	-	10	-	-	-	5	5	-
	M	10	-	-	10	-	-	-	5	5	-
	F	-	-	-	-	-	-	-	-	-	-
1959	T	33	-	-	33	15	-	1	-	1	16
	M	33	-	-	33	15	-	1	-	1	16
	F	-	-	-	-	-	-	-	-	-	-
1960	T	-	-	-	-	-	-	-	-	-	-
	M	-	-	-	-	-	-	-	-	-	-
	F	-	-	-	-	-	-	-	-	-	-
1961	T	2	-	-	2	-	-	-	-	-	2
	M	2	-	-	2	-	-	-	-	-	2
	F	-	-	-	-	-	-	-	-	-	-

TABLE 4

The number and Percentage Distribution of Employment Status of Juveniles (7 - 15)  
Found Delinquent in Canada - 1957-1961

	1957		1958		1959		1960		1961	
	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL	8,811	100.0	10,307	100.0	10,608	100.0	12,331	100.0	13,357	100.0
EMPLOYED	484	5.5	488	4.7	482	4.6	441	3.6	325	2.4
UNEMPLOYED	316	3.6	500	4.9	447	4.2	524	4.2	381	2.9
STUDENT	7,923	89.9	9,182	89.1	9,360	88.2	11,255	91.3	12,364	92.6
NOT STATED	88	1.0	137	1.3	319	3.0	111	0.9	287	2.1

TABLE 5

## EMPLOYMENT STATUS OF JUVENILES (7-15) BROUGHT BEFORE THE COURT AND FOUND DELINQUENT - CANADA, 1957-1961

Brought before the Court													Found Delinquent											
													Not Sta- ted											Not Sta- ted
Total													Total	7	8	9	10	11	12	13	14	15	ted	
1957																								
TOTAL		10618	29	102	292	438	636	950	1631	2660	3868	12	8811	25	83	232	369	525	794	1369	2208	3194	12	
EMPLOYED		642	-	-	-	1	1	2	13	113	512	-	484	-	-	-	1	1	1	7	75	399	-	
UNEMPLOYED		422	-	-	-	-	1	1	8	79	333	-	316	-	-	-	-	1	-	8	54	253	-	
STUDENT		9450	29	102	291	437	633	947	1607	2448	2949	7	7923	25	83	232	368	522	793	1352	2060	2481	7	
NOT STATED		104	-	-	1	-	1	-	3	20	74	5	88	-	-	-	-	1	-	2	19	61	5	
1958																								
TOTAL		11766	33	104	264	436	738	1101	1712	2904	4415	59	10307	18	74	208	375	625	972	1496	2559	3944	36	
EMPLOYED		536	-	-	-	-	-	-	2	57	476	1	488	-	-	-	-	-	-	1	51	435	1	
UNEMPLOYED		542	-	-	-	1	1	5	18	101	416	-	500	-	-	-	1	1	5	17	95	381	-	
STUDENT		10420	33	101	261	429	722	1078	1662	2690	3408	36	9182	18	74	208	373	618	959	1467	2386	3054	25	
NOT STATED		268	-	3	3	6	15	18	30	56	115	22	137	-	-	-	1	6	8	11	27	74	10	



TABLE 5  
Continued

EMPLOYMENT STATUS OF JUVENILES (7-15) BROUGHT BEFORE THE COURT AND FOUND DELINQUENT - CANADA, 1957-1961

Brought before the Court														Found Delinquent													
														Not Sta- ted													
Total														Total													
1959														1960													
TOTAL	11986	25	129	263	481	742	1285	1840	2919	4227	75	10608	19	92	208	399	627	1102	1643	2661	3805	52					
EMPLOYED	512	-	1	-	-	1	-	6	67	437	1	482	-	-	-	-	1	-	5	61	414	1					
UNEMPLOYED	463	-	-	-	-	-	4	14	91	354	-	447	-	-	1	-	-	4	14	90	338	-					
STUDENT	10563	25	123	259	466	717	1234	1766	2692	3234	48	9360	19	90	205	389	608	1067	1590	2461	2897	34					
NOT STATED	448	-	5	4	15	24	48	54	69	203	26	319	-	2	2	10	18	31	34	49	156	17					
TOTAL	13969	39	141	366	564	912	1447	2482	3480	4485	53	12331	30	108	287	465	779	1261	2217	3111	4035	38					
EMPLOYED	463	-	-	-	-	-	-	8	60	391	4	441	-	-	-	-	-	-	8	56	373	4					
UNEMPLOYED	549	-	-	-	-	5	6	16	91	431	-	524	-	-	-	-	5	6	16	88	409	-					
STUDENT	12829	39	141	366	559	906	1434	2453	3309	3589	33	11255	30	108	287	461	773	1248	2188	2950	3186	24					
NOT STATED	128	-	-	-	5	1	7	5	20	74	16	111	-	-	-	4	1	7	5	17	67	10					

TABLE 5  
Continued

EMPLOYMENT STATUS OF JUVENILES (7-15) BROUGHT BEFORE THE COURT AND FOUND DELINQUENT - CANADA, 1957-1961

Brought before the Court													Found Delinquent										Not Sta- ted	
													Not Sta- ted										Not Sta- ted	
Total	7	8	9	10	11	12	13	14	15	ted	Total	7	8	9	10	11	12	13	14	15	ted			
1961																								
TOTAL	14804	47	144	321	516	840	1547	2491	4029	4924	45	13357	30	114	270	448	738	1400	2174	3655	4499	29		
EMPLOYED	344	-	-	-	-	-	-	1	43	299	1	325	-	-	-	-	-	-	1	39	284	1		
UNEMPLOYED	399	-	-	1	-	-	4	13	68	311	2	381	-	-	1	-	-	3	11	65	299	2		
STUDENT	13718	47	143	319	511	830	1531	2345	3844	4124	24	12364	30	113	268	445	729	1386	2136	3487	3755	15		
NOT STATED	343	-	1	1	5	10	12	32	74	190	18	287	-	1	1	3	4	11	26	64	161	11		

TABLE 6

The Number and Percentage Distribution of Education Status for Juveniles (7-15)  
Found Delinquent in Canada - 1957-1961

	1957		1958		1959		1960		1961	
	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL	8,811	100.0	10,307	100.0	10,608	100.0	12,331	100.0	13,357	100.0
Auxiliary Grade	125	1.4	111	1.1	93	0.9	151	1.2	158	1.2
1 to 5	1,870	21.2	2,103	20.4	2,185	20.6	2,616	21.2	2,618	19.6
6 and 7	2,903	32.9	3,248	31.5	3,467	32.7	4,392	35.6	4,618	34.6
8	1,662	18.9	2,013	19.5	1,906	18.0	2,438	19.8	2,635	19.7
9 to 11	2,180	24.7	2,224	21.6	2,177	20.5	2,410	19.6	2,767	20.7
12 and 13	14	0.2	1	--	11	0.1	5	--	4	--
Not Known	57	0.7	607	5.9	769	7.2	319	2.6	557	4.2



TABLE 7

## EDUCATION OF JUVENILES (7-15) BROUGHT BEFORE THE COURT AND FOUND DELINQUENT - CANADA, 1957-1961

Brought before the Court														Found Delinquent													
		TOTAL	7	8	9	10	11	12	13	14	15	N.K.	TOTAL	7	8	9	10	11	12	13	14	15	N.K.				
1957																											
Total		10620	29	102	292	438	636	950	1631	2660	3870	12	8811	25	83	232	369	525	794	1369	2208	3194	12				
Auxiliary Grade		146	-	-	1	4	9	16	19	40	57	-	125	-	-	1	2	9	15	15	37	46	-				
Grade 1		32	9	6	8	4	3	-	-	-	2	-	27	8	6	5	4	3	-	-	-	1	-				
2		165	19	50	52	18	15	5	2	2	2	-	128	16	39	38	16	11	4	2	2	-	-				
3		393	1	43	124	98	47	38	21	11	10	-	324	1	36	100	87	38	32	17	7	6	-				
4		699	-	2	92	165	139	95	85	61	60	-	565	-	1	76	133	111	76	72	52	44	-				
5		1015	-	-	15	130	230	198	177	137	128	-	826	-	-	12	110	185	165	146	111	97	-				
6		1431	-	-	-	17	156	334	337	286	301	-	1139	-	-	-	15	134	276	281	214	219	-				
7		2122	-	-	-	1	34	214	577	731	565	-	1764	-	-	-	1	31	182	476	609	465	-				
8		1951	-	-	-	-	1	42	345	750	813	-	1662	-	-	-	-	1	37	301	632	691	-				
9		1879	-	-	-	-	-	7	62	560	1250	-	1576	-	-	-	-	-	6	54	472	1044	-				
10		628	-	-	-	-	-	-	3	70	555	-	532	-	-	-	-	-	-	3	61	468	-				
11		76	-	-	-	-	-	1	-	2	73	-	72	-	-	-	-	-	1	-	2	69	-				
12		15	-	-	-	-	-	-	-	3	12	-	12	-	-	-	-	-	-	-	3	9	-				
13		2	-	-	-	-	-	-	-	-	2	-	2	-	-	-	-	-	-	-	-	2	-				
Not Known		66	-	1	-	1	2	-	3	7	40	12	57	-	1	-	1	2	-	2	6	33	12				

TABLE 7  
Continued

EDUCATION OF JUVENILES (7-15) BROUGHT BEFORE THE COURT AND FOUND DELINQUENT - CANADA, 1957-1961

Brought before the Court Found Delinquent

	TOTAL	7	8	9	10	11	12	13	14	15	N.K.	TOTAL	7	8	9	10	11	12	13	14	15	N.K.
<u>1958</u>																						
Total	11766	33	104	264	436	738	1101	1712	2904	4415	59	10307	18	74	208	375	625	972	1496	2559	3944	36
Auxiliary Grade	120	-	-	-	-	3	6	19	36	54	-	111	-	-	-	2	3	6	17	33	50	-
Grade 1	48	13	11	6	6	4	3	1	-	3	1	33	7	8	5	5	3	2	1	-	2	-
2	177	13	48	46	29	12	10	6	4	9	-	139	8	35	40	25	7	10	5	3	6	-
3	384	1	26	98	91	64	41	23	20	19	1	327	1	21	70	76	59	40	22	20	17	1
4	719	-	3	74	148	161	122	76	64	71	-	642	-	2	67	127	142	109	67	60	68	-
5	1070	-	1	13	105	227	233	192	140	159	-	962	-	1	9	98	201	209	169	133	142	-
6	1499	-	-	-	18	180	325	321	320	333	2	1344	-	-	-	16	143	294	296	280	313	2
7	2127	-	-	1	3	34	253	509	664	659	4	1904	-	-	-	3	33	225	444	597	599	3
8	2240	-	-	1	1	2	36	398	802	997	2	2013	-	-	1	2	2	30	346	718	912	2
9	1761	-	-	-	-	3	2	65	570	1119	2	1578	-	-	-	-	3	1	57	519	998	-
10	637	-	-	-	-	-	-	1	76	559	1	565	-	-	-	-	-	-	1	65	499	-
11	94	-	-	-	-	1	-	-	11	82	-	81	-	-	-	-	-	-	-	9	72	-
12	1	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	-	-	-	-	1	-
13	1	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Not Known	888	6	15	25	32	47	70	101	197	349	46	607	2	7	16	21	29	46	71	122	265	28

TABLE 7  
Continued

EDUCATION OF JUVENILES (7-15) BROUGHT BEFORE THE COURT AND FOUND DELINQUENT - CANADA, 1957-1961

		Brought before the Court											Found Delinquent										
		TOTAL	7	8	9	10	11	12	13	14	15	N.K.	TOTAL	7	8	9	10	11	12	13	14	15	N.K.
<u>1959</u>																							
Total		11986	25	129	263	481	742	1285	1840	2919	4227	75	10608	19	92	208	399	627	1102	1643	2661	3805	52
Auxiliary Grade		101	1	-	-	2	3	12	18	23	41	1	93	1	-	-	1	3	10	16	22	39	1
Grade	1	50	13	18	8	2	2	1	-	2	3	1	39	10	14	7	-	2	1	-	2	2	1
	2	150	9	30	56	30	12	2	4	4	3	-	124	7	23	46	25	11	1	4	4	3	-
	3	430	-	51	94	101	67	47	23	19	26	2	372	-	37	75	92	62	40	23	18	23	2
	4	686	-	11	73	139	146	123	92	59	43	-	608	-	8	57	116	128	118	85	57	39	-
	5	1188	-	2	14	140	252	246	204	170	160	-	1042	-	1	9	113	213	216	179	160	151	-
	6	1595	-	-	2	23	170	369	369	348	312	2	1441	-	-	2	19	138	321	337	324	299	1
	7	2240	-	-	-	3	31	312	536	678	677	3	2026	-	-	-	2	24	263	485	626	624	2
	8	2112	-	-	-	-	4	65	397	748	897	1	1906	-	-	-	-	3	53	347	692	810	1
	9	1665	-	-	-	-	-	4	53	550	1054	4	1527	-	-	-	-	-	4	62	503	954	4
	10	623	-	-	-	-	-	-	4	92	527	-	567	-	-	-	-	-	-	5	81	481	-
	11	97	-	-	-	-	-	-	-	7	90	-	83	-	-	-	-	-	-	-	6	77	-
	12	10	-	-	-	-	-	-	-	-	10	-	10	-	-	-	-	-	-	-	-	10	-
	13	1	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	-	-	-	-	1	-
Not Known		1038	2	17	16	41	55	104	140	219	383	61	769	1	9	12	31	43	75	100	166	292	40

TABLE 7  
Continued

EDUCATION OF JUVENILES (7-15) BROUGHT BEFORE THE COURT AND FOUND DELINQUENT - CANADA, 1957-1961

Brought before the Court														Found Delinquent									
		TOTAL	7	8	9	10	11	12	13	14	15	N.K.	TOTAL	7	8	9	10	11	12	13	14	15	N.K.
1960																							
Total		13969	39	141	366	564	912	1447	2482	3480	4485	53	12331	30	108	287	465	779	1261	2217	3111	4035	18
Auxiliary Grade		170	3	1	3	8	13	17	28	45	50	2	151	3	1	3	8	11	16	23	41	44	1
Grade	1	44	10	15	8	2	2	3	1	1	2	-	38	7	14	6	2	2	3	1	1	2	-
	2	202	20	69	55	26	14	5	9	3	1	-	166	16	50	47	23	12	5	9	3	1	-
	3	550	4	44	155	122	100	48	32	29	16	-	453	2	35	114	97	87	47	28	28	15	-
	4	863	-	8	107	183	210	156	96	61	42	-	738	-	4	80	151	176	138	90	59	40	-
	5	1356	-	2	23	162	270	279	267	201	152	-	1221	-	2	22	134	230	249	249	191	144	-
	6	2032	-	-	2	38	234	448	540	431	338	1	1800	-	-	2	34	195	379	482	389	318	1
	7	2890	-	1	3	7	51	377	834	913	703	1	2592	-	1	3	5	48	332	741	811	650	1
	8	2761	-	-	1	-	2	82	524	1045	1106	1	2438	-	-	1	-	2	65	462	922	985	1
	9	1983	-	-	-	-	2	5	103	599	1274	-	1758	-	-	-	-	2	3	89	537	1127	-
	10	649	-	-	-	-	-	-	9	85	555	-	576	-	-	-	-	-	-	7	73	496	-
	11	85	-	-	-	-	-	-	1	5	79	-	76	-	-	-	-	-	-	1	5	70	-
	12	5	-	-	-	-	-	-	-	-	5	-	5	-	-	-	-	-	-	-	-	5	-
	13	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Not Known		379	2	1	9	16	14	27	38	62	162	48	319	2	1	9	11	14	24	35	51	138	34



TABLE 7  
Continued

EDUCATION OF JUVENILES (7-15) BROUGHT BEFORE THE COURT AND FOUND DELINQUENT - CANADA, 1957-1961

Brought before the Court      Found Delinquent

		TOTAL	7	8	9	10	11	12	13	14	15	N.K.	TOTAL	7	8	9	10	11	12	13	14	15	N.K.
<u>1961</u>																							
Total		14804	47	144	321	516	840	1547	2391	4029	4924	45	13357	30	114	270	448	738	1400	2174	3655	4499	29
Auxiliary		176	1	-	3	4	7	13	21	66	60	1	158	1	-	2	4	5	12	20	56	57	1
Grade		48	15	12	14	2	-	-	2	-	3	-	38	8	9	14	2	-	-	2	-	3	-
1		183	22	62	44	23	13	9	4	3	3	-	151	15	50	36	19	13	9	4	2	3	-
2		441	6	54	111	104	67	40	18	21	20	-	390	5	43	93	94	60	39	17	20	19	-
3		836	-	11	107	184	180	147	91	60	56	-	744	-	8	94	153	159	134	83	58	55	-
4		1430	-	-	26	141	266	327	283	203	184	-	1295	-	-	20	125	228	290	262	191	179	-
5		2111	-	-	4	35	233	523	525	447	344	-	1909	-	-	3	34	208	463	468	414	319	-
6		2962	-	-	-	2	48	385	743	999	785	-	2709	-	-	-	2	41	359	676	892	739	-
7		2890	-	-	-	-	-	62	515	1170	1135	1	2635	-	-	-	-	7	58	474	1073	1022	1
8		2243	-	-	-	-	-	4	85	783	1371	-	2050	-	-	-	-	-	4	78	714	1254	-
9		707	-	-	-	-	-	1	10	110	586	-	641	-	-	-	-	-	1	8	94	538	-
10		84	-	-	-	-	-	-	-	7	77	-	76	-	-	-	-	-	-	-	7	69	-
11		4	-	-	-	-	-	-	-	-	4	-	4	-	-	-	-	-	-	-	-	4	-
12		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
13		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Not Known		689	3	5	12	21	19	36	94	160	296	43	557	1	4	8	15	17	31	82	134	238	27

TABLE 8

Persons 16-24 years of age charged and convicted, 1957-1961

Canada

	All Offences						Selected Offences					
	Charged			Convicted			Charged			Convicted		
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.	15206	14524	682	15204	14522	682	12326	11823	503	12324	11821	503
- Rate/100,000	721	1366	65	721	1366	65	585	1112	48	585	1112	48
1958 - No.	16916	16110	806	16903	16099	804	13784	13167	617	13774	13159	615
- Rate	782	1478	75	782	1477	75	637	1208	58	637	1208	57
1959 - No.	16441	15566	875	16422	15550	872	13447	12804	643	13437	12795	642
- Rate	747	1403	80	746	1403	80	611	1155	59	611	1154	59
1960 - No.	18711	17652	1059	18706	17648	1058	15455	14663	792	15452	14660	792
- Rate	833	1561	95	832	1560	95	688	1296	71	688	1296	71
1961 - No.	19672	18437	1235	19659	18425	1234	15975	15047	928	15969	15041	928
- Rate	857	1599	108	856	1598	108	696	1305	81	695	1305	81

Newfoundland

TABLE 8(a)

		All Offences			Selected Offences					
		Charged			Convicted			Charged		
		T	M	F	T	M	F	T	M	F
1957 - No.		353	336	17	353	336	17	284	268	16
- Rate/100,000		595	1112	58	595	1112	58	479	887	55
1958 - No.		319	299	20	318	299	19	270	254	15
- Rate		530	980	67	528	980	64	449	883	51
1959 - No.		302	284	18	302	284	18	247	229	18
- Rate		493	916	59	493	916	59	403	739	59
1960 - No.		308	300	8	308	300	8	254	247	7
- Rate		494	952	26	494	952	26	407	784	23
1961 - No.		407	377	30	407	377	30	347	322	25
- Rate		637	1174	94	637	1174	94	543	1002	79

Prince Edward Island

TABLE 8(b)

		All Offences			Selected Offences					
		Charged			Convicted			Charged		
		T	M	F	T	M	F	T	M	F
1957 - No.		46	45	1	46	45	1	40	39	1
- Rate/100,000		368	714	16	368	714	16	320	619	16
1958 - No.		69	68	1	69	68	1	50	49	1
- Rate		535	1063	15	535	1063	15	388	766	15
1959 - No.		39	39	-	39	39	-	33	33	-
- Rate		300	600	-	300	600	-	254	508	-
1960 - No.		17	17	-	17	17	-	13	13	-
- Rate		129	250	-	129	250	-	98	191	-
1961 - No.		30	29	1	30	29	1	28	27	1
- Rate		228	426	16	228	426	16	213	396	16

Nova Scotia

TABLE 8(c)

	All Offences						Selected Offences					
	Charged			Convicted			Charged			Convicted		
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.	653	630	23	653	630	23	544	523	21	544	523	21
- Rate/100,000	695	1299	51	695	1299	51	579	1078	46	579	1078	46
1958 - No.	750	723	27	748	721	27	605	585	20	605	585	20
- Rate	788	1470	59	786	1465	59	636	1189	43	636	1189	43
1959 - No.	791	763	28	791	763	28	642	618	24	642	618	24
- Rate	820	1529	60	820	1529	60	665	1238	52	665	1238	52
1960 - No.	796	766	30	796	766	30	653	631	22	653	631	22
- Rate	814	1514	64	814	1514	64	668	1247	47	668	1247	47
1961 - No.	813	774	39	812	773	39	647	615	32	646	614	32
- Rate	819	1507	81	818	1505	81	652	1197	67	651	1195	67

TABLE 8(d)

New Brunswick

	Charged			Convicted			Charged			Convicted		
	T	M	F	T	M	F	T	M	F	T	M	F
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.	347	336	11	347	336	11	252	246	6	252	246	6
- Rate/100,000	467	918	29	467	918	29	339	672	16	339	672	16
1958 - No.	499	490	9	499	490	9	410	402	8	410	402	8
- Rate	662	1317	24	662	1317	24	544	1081	21	544	1081	21
1959 - No.	397	381	16	397	381	16	331	318	13	331	318	13
- Rate	518	997	42	519	997	42	432	832	34	432	832	34
1960 - No.	502	484	18	502	484	18	403	391	12	403	391	12
- Rate	649	1244	47	649	1244	47	521	1005	31	521	1005	31
1961 - No.	636	618	18	634	616	18	524	510	14	524	510	14
- Rate	810	1550	47	807	1545	47	667	1279	36	667	1279	36



TABLE 8(e)

## Quebec

	All Offences						Selected Offences					
	Charged			Convicted			Charged			Convicted		
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.	3201	3098	103	3201	3098	103	2653	2577	76	2653	2577	76
- Rate/100,000	193	942	31	193	942	31	401	783	23	401	783	23
1958 - No.	3983	3838	145	3979	3835	144	3369	3251	118	3366	3249	117
- Rate	588	1142	43	588	1141	42	498	967	35	497	967	34
1959 - No.	3699	3569	130	3698	3568	130	3038	2947	91	3037	2946	91
- Rate	533	1035	37	533	1035	37	438	855	26	438	855	26
1960 - No.	4055	3901	154	4055	3901	154	3373	3255	118	3373	3255	118
- Rate	569	1101	43	569	1101	43	473	918	33	473	918	33
1961 - No.	4473	4263	210	4471	4261	210	3591	3431	160	3590	3430	160
- Rate	609	1168	57	608	1167	57	489	940	43	489	940	43

TABLE 8(f)

## Ontario

	All Offences						Selected Offences					
	Charged			Convicted			Charged			Convicted		
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.	5539	5295	244	5537	5293	244	4491	4307	184	4489	4305	184
- Rate/100,000	832	1575	74	832	1575	74	674	1281	56	674	1281	56
1958 - No.	6074	5793	281	6068	5787	281	4921	4701	220	4915	4695	220
- Rate	883	1671	82	882	1670	82	715	1356	64	714	1355	64
1959 - No.	6074	5722	352	6067	5216	341	4991	4726	265	4987	4723	264
- Rate	871	1630	102	870	1486	99	716	1346	77	715	1346	76
1960 - No.	6892	6472	420	6888	6469	419	5725	5422	303	5723	5420	303
- Rate	968	1809	118	967	1808	118	804	1516	85	804	1515	85
1961 - No.	6880	6448	432	6877	6446	431	5554	5252	302	5553	5251	302
- Rate	949	1778	119	948	1777	119	766	1448	83	766	1448	83

TABLE 8(g)

## Manitoba

		All Offences						Selected Offences					
		Charged			Convicted			Charged			Convicted		
		T	M	F	T	M	F	T	M	F	T	M	F
1957	- No.	931	853	78	931	853	78	733	681	52	733	681	52
	- Rate/100,000	869	1577	147	705	1577	147	684	1259	98	684	1259	98
1958	- No.	705	658	47	705	658	47	565	530	35	565	530	35
	- Rate	649	1196	86	649	1196	86	520	964	65	520	964	65
1959	- No.	544	515	29	544	515	29	436	420	16	436	420	16
	- Rate	493	920	53	493	920	53	395	750	29	395	750	29
1960	- No.	996	889	107	995	888	107	852	773	79	851	772	79
	- Rate	888	1562	194	888	1561	194	760	1359	143	759	1357	143
1961	- No.	1134	1027	107	1130	1023	107	1003	904	99	1001	902	99
	- Rate	994	1772	191	991	1766	191	879	1560	176	878	1557	176

TABLE 8(h)

## Saskatchewan

		Charged			Convicted			Charged			Convicted		
		T	M	F	T	M	F	T	M	F	T	M	F
		T	M	F	T	M	F	T	M	F	T	M	F
1957	- No.	611	585	26	611	585	26	509	486	23	509	486	23
	- Rate/100,000	554	1050	48	554	1050	48	462	873	42	462	873	42
1958	- No.	706	665	41	706	665	41	603	568	35	603	568	35
	- Rate	637	1183	75	637	1183	75	544	1011	64	544	1011	64
1959	- No.	685	660	25	685	660	25	592	573	19	592	573	19
	- Rate	609	1152	45	609	1152	45	526	1000	34	526	1000	34
1960	- No.	755	721	34	755	721	34	650	618	32	650	618	32
	- Rate	669	1252	61	669	1252	61	576	1073	58	576	1073	58
1961	- No.	927	874	53	927	874	53	796	751	45	796	751	45
	- Rate	816	1505	96	816	1505	96	701	1293	81	701	1293	81

Alberta

TABLE 8(i)

	All Offences						Selected Offences					
	Charged			Convicted			Charged			Convicted		
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.	1444	1371	73	1444	1371	73	1040	990	50	1040	990	50
- Rate/100,000	960	1790	99	960	1790	99	691	1292	68	691	1292	68
1958 - No.	1646	1542	104	1646	1542	104	1320	1245	75	1320	1245	75
- Rate	1070	1969	138	1070	1969	138	858	1590	99	858	1590	99
1959 - No.	1756	1620	136	1755	1619	136	1421	1308	113	1420	1307	113
- Rate	1114	2022	175	1114	2021	175	902	1633	146	901	1632	146
1960 - No.	1923	1795	128	1923	1795	128	1600	1484	116	1600	1484	116
- Rate	1189	2194	160	1189	2194	160	989	1814	145	989	1814	145
1961 - No.	1887	1741	146	1886	1740	146	1541	1420	121	1540	1419	121
- Rate	1135	2084	176	1135	2084	176	927	1700	146	926	1699	146

British Columbia

TABLE 8(j)

	All Offences						Selected Offences					
	Charged			Convicted			Charged			Convicted		
	T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.	2054	1952	102	2054	1952	102	1614	1549	65	1614	1549	65
- Rate/100,000	1223	2233	127	1223	2233	127	961	1772	81	961	1772	81
1958 - No.	2126	1995	131	2126	1995	131	1641	1552	89	1641	1552	89
- Rate	1208	2178	155	1208	2178	155	932	1694	105	932	1694	105
1959 - No.	2103	1964	139	2093	1956	137	1673	1591	82	1669	1587	82
- Rate	1188	2151	162	1182	2142	160	945	1743	96	943	1738	96
1960 - No.	2373	2217	156	2373	2217	156	1854	1755	99	1854	1755	99
- Rate	1320	2410	178	1320	2410	178	1031	1908	113	1031	1908	113
1961 - No.	2368	2175	193	2368	2175	193	1838	1714	124	1838	1714	124
- Rate	1298	2353	215	1298	2353	215	1007	1854	138	1007	1854	138

		All Offences						Selected Offences					
		Charged			Convicted			Charged			Convicted		
		T	M	F	T	M	F	T	M	F	T	M	F
1957 - No.		27	23	4	27	23	4	23	20	3	23	20	3
- Rate/100,000		574	885	190	574	885	190	489	769	143	489	769	143
1958 - No.		39	39	-	39	39	-	30	30	-	30	30	-
- Rate		867	1500	-	867	1500	-	667	1154	-	667	1154	-
1959 - No.		51	49	2	51	49	2	45	43	2	45	43	2
- Rate		1109	1885	100	1109	1885	100	978	1654	100	978	1654	100
1960 - No.		94	90	4	94	90	4	78	74	4	78	74	4
- Rate		1880	3103	190	1880	3103	190	1560	2552	190	1560	2552	190
1961 - No.		117	111	6	117	111	6	106	101	5	106	101	5
- Rate		2220	3750	260	2220	3750	260	2011	3412	216	2011	3412	216



DISPOSITION-YOUTHFUL OFFENDERS (16-24) CONVICTED IN CANADA  
(1957-61)

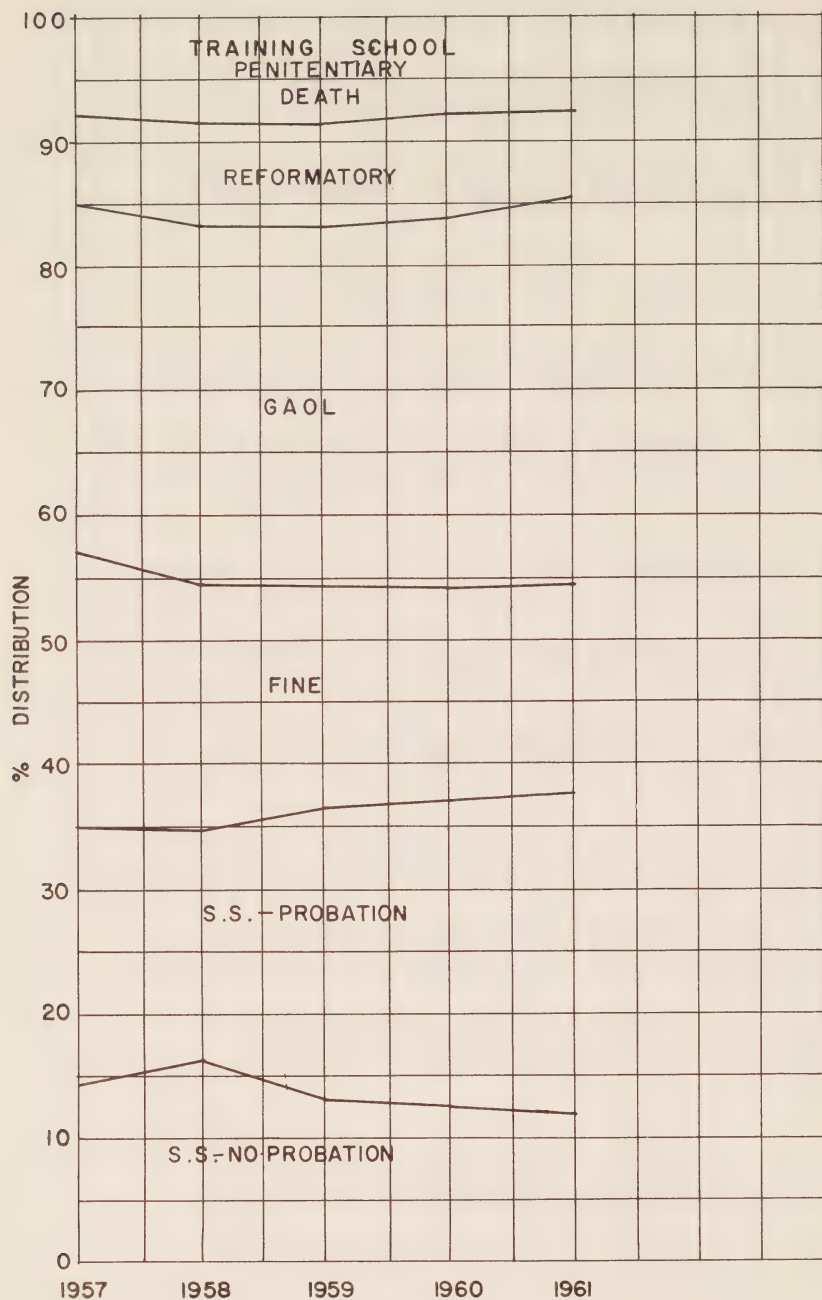


TABLE 10

Percentage Distribution - Dispositions of Youthful Offenders (16-24)  
Convicted in Canada 1957-1961

		Total	Suspended Sentence		Probation	Prob.	Fine	Gaol	Reform.	Training		Pent.	Death
			No	Sentence						School			
1957	Total	100.0	100.0	14.6	20.7	21.3	28.2	8.1	1.2	5.7	N		
	M.	95.5	100.0	14.3	20.5	21.3	28.5	8.4	1.2	5.9	N		
	F.	4.5	100.0	22.0	26.8	21.5	22.6	2.9	2.5	1.6	N		
1958	Total	100.0	100.0	16.0	18.6	19.5	29.0	8.1	1.1	7.2	N		
	M.	95.2	100.0	15.8	18.1	19.6	29.3	8.5	1.1	7.9	N		
	F.	4.8	100.0	21.5	29.0	17.9	23.4	3.7	2.4	2.1	N		
1959	Total	100.0	100.0	12.6	23.4	18.2	29.2	7.6	1.7	6.7	N		
	M.	94.7	100.0	12.2	23.0	18.2	30.1	7.8	1.6	7.0	N		
	F.	5.3	100.0	19.6	30.5	17.2	24.0	3.5	2.9	2.2	N		
1960	Total	100.0	100.0	12.2	24.5	17.1	30.9	7.3	1.2	6.6	N		
	M.	94.3	100.0	11.7	24.2	16.9	31.3	7.6	1.2	7.0	N		
	F.	5.7	100.0	21.8	28.9	19.4	24.5	3.5	1.4	1.1	N		
1961	Total	100.0	100.0	11.4	25.7	16.9	31.6	6.5	1.1	6.6	N		
	M.	93.8	100.0	11.0	25.3	16.8	32.1	6.7	1.1	6.9	N		
	F.	6.2	100.0	17.7	31.8	19.4	25.2	3.5	1.1	1.3	N		

N less .5%

TABLE 11

## Disposition of Youthful Offenders (16-24) Convicted in Canada 1957 - 1961

	Total	Suspended Sentence		Fine	Gaol	Reform.	Training		Pent.	Death
		No Probation	Prob.				School			
1957	Total	15204	2216	3155	4289	1238	189	870	4	
	M.	14522	2066	3096	4135	1218	172	859	4	
	F.	682	150	183	154	20	17	11	-	
1958	Total	16903	2714	3139	4899	1366	192	1283	6	
	M.	16099	2541	2906	4711	1366	173	1266	6	
	F.	804	173	233	188	30	19	17	-	
1959	Total	16422	2075	3836	4894	1241	275	1112	7	
	M.	15550	1904	3570	4684	1210	250	1093	7	
	F.	872	171	266	210	31	25	19	-	
1960	Total	18706	2287	4583	5787	1374	232	1246	5	
	M.	17648	2063	4277	5528	1337	217	1234	5	
	F.	1058	224	306	259	37	15	12	-	
1961	Total	19659	2248	5059	6222	1283	220	1291	6	
	M.	18425	2030	4667	5911	1240	206	1275	6	
	F.	1234	218	392	311	43	14	16	-	

TABLE 11(a)

## Disposition of Youthful Offenders (16-24) Convicted in Newfoundland 1957-1961

		Suspended Sentence					Gaol	Reform.	Training		Death
		Total	No Probation	Prob.	Fine				School	Pent.	
1957	Total	353	35	47	146	121	-	-	-	4	-
	M.	336	31	47	133	121	-	-	-	4	-
	F.	17	4	-	13	-	-	-	-	-	-
1958	Total	318	100	-	119	93	-	-	-	6	-
	M.	299	89	-	115	89	-	-	-	6	-
	F.	19	11	-	4	4	-	-	-	-	-
1959	Total	302	101	-	96	97	-	-	2	6	-
	M.	284	91	-	90	97	-	-	-	6	-
	F.	18	10	-	6	-	-	-	2	-	-
1960	Total	308	60	32	92	117	-	-	2	5	-
	M.	300	58	30	89	116	-	-	2	5	-
	F.	8	2	2	3	1	-	-	-	-	-
1961	Total	407	82	50	84	165	-	-	3	23	-
	M.	377	75	43	80	153	-	-	3	23	-
	F.	30	7	7	4	12	-	-	-	-	-



TABLE 11(b)

## Disposition of Youthful Offenders (16-24) Convicted in Prince Edward Island 1957-1961

Suspended Sentence										
	Total	No		Prob.	Fine	Gaol	Reform.	Training School	Pent.	Death
		Probation								
1957	Total	46	3	3	11	23	-	-	6	-
	M.	45	2	3	11	23	-	-	6	-
	F.	1	1	-	-	-	-	-	-	-
1958	Total	69	26	-	17	22	-	4	-	-
	M.	68	26	-	16	22	-	4	-	-
	F.	1	-	-	1	-	-	-	-	-
1959	Total	39	14	-	12	12	-	-	1	-
	M.	39	14	-	12	12	-	-	1	-
	F.	-	-	-	-	-	-	-	-	-
1960	Total	17	5	-	5	7	-	-	-	-
	M.	17	5	-	5	7	-	-	-	-
	F.	-	-	-	-	-	-	-	-	-
1961	Total	30	9	-	9	10	-	-	2	-
	M.	29	9	-	9	9	-	-	2	-
	F.	1	-	-	-	1	-	-	-	-

TABLE 11(c)

## Disposition of Youthful Offenders (16-24) Convicted in Nova Scotia 1957-1961

<u>Suspended Sentence</u>											
		Total	No Probation	Prob.	Fine	Gaol	Reform.	Training School	Pent.	Death	
1957	Total	653	60	177	161	181	3	-	71	-	
	M.	630	55	164	160	180	-	-	71	-	
	F.	23	5	13	1	1	3	-	-	-	
1958	Total	748	76	216	182	171	4	-	97	2	
	M.	721	71	206	175	171	-	-	96	2	
	F.	27	5	10	7	-	4	-	1	-	
1959	Total	791	75	210	209	197	-	-	100	-	
	M.	763	62	205	203	195	-	-	98	-	
	F.	28	13	5	6	2	-	-	2	-	
1960	Total	796	99	223	165	167	-	-	142	-	
	M.	766	87	212	164	162	-	-	141	-	
	F.	30	12	11	1	5	-	-	1	-	
1961	Total	812	133	197	172	209	5	-	96	-	
	M.	773	116	184	170	207	-	-	96	-	
	F.	39	17	13	2	2	5	-	-	-	

TABLE 11(d)

## Disposition of Youthful Offenders (16-24) Convicted in New Brunswick 1957-1961

<u>Suspended Sentence</u>										
	Total	No		Prob.	Fine	Gaol	Reform.	Training		Death
		Probation						School	Pent.	
1957	Total	347	91	17	92	107	-	-	40	-
	M.	336	85	16	91	105	-	-	39	-
	F.	11	6	1	1	2	-	-	1	-
1958	Total	499	157	2	99	188	-	-	52	1
	M.	490	149	1	99	188	-	-	52	1
	F.	9	8	1	-	-	-	-	-	-
1959	Total	397	122	19	77	120	2	1	56	-
	M.	381	112	18	76	119	-	1	55	-
	F.	16	10	1	1	1	2	-	1	-
1960	Total	502	166	1	87	187	2	-	59	-
	M.	484	155	-	85	186	-	-	58	-
	F.	18	11	1	2	1	2	-	1	-
1961	Total	634	100	85	125	254	-	-	69	1
	M.	616	93	82	121	250	-	-	69	1
	F.	18	7	3	4	4	-	-	-	-

TABLE 11(e)

## Disposition of Youthful Offenders (16-24) Convicted in Quebec 1957-1961

Suspended Sentence											
		Total	No Probation	Prob.	Fine	Gaol	Reform.	Training School	Pent.	Death	
1957	Total	3201	1060	347	489	868	-	106	331	-	
	M.	3098	1010	336	475	845	-	104	328	-	
	F.	103	50	11	14	23	-	2	3	-	
1958	Total	3979	1298	151	540	1263	-	96	630	1	
	M.	3835	1230	138	523	1225	-	91	627	1	
	F.	144	68	13	17	38	-	5	3	-	
1959	Total	3698	854	539	517	1194	-	129	463	2	
	M.	3568	809	520	501	1156	-	120	460	2	
	F.	130	45	19	16	38	-	9	3	-	
1960	Total	4055	705	768	631	1331	-	114	506	-	
	M.	3901	647	744	609	1289	-	109	503	-	
	F.	154	58	24	22	42	-	5	3	-	
1961	Total	4471	844	968	604	1462	-	113	479	1	
	M.	4261	784	923	573	1396	-	106	478	1	
	F.	210	60	45	31	66	-	7	1	-	



TABLE 11(f)

## Disposition of Youthful Offenders (16-24) Convicted in Ontario 1957-1961

<u>Suspended Sentence</u>									
	Total	No Probation	Prob.	Fine	Gaol	Reform.	Training School	Pent.	Death
1957									
Total	5538	434	1803	931	1277	910	5	176	2
M.	5294	408	1695	881	1237	893	5	173	2
F.	244	26	108	50	40	17	-	3	-
1958									
Total	6068	440	1961	1030	1429	1017	4	185	2
M.	5787	420	1837	977	1377	991	3	180	2
F.	281	20	124	53	52	26	1	5	-
1959									
Total	6067	444	2111	845	1471	947	11	236	2
M.	5716	397	1966	784	1409	918	11	229	2
F.	351	47	145	61	62	29	-	7	-
1960									
Total	6881	494	2297	1274	1494	1092	4	231	2
M.	6469	453	2132	1161	1432	1057	3	228	2
F.	419	41	165	113	62	35	1	3	-
1961									
Total	6877	472	2256	1076	1794	971	14	291	3
M.	6446	427	2096	969	1718	933	14	286	3
F.	431	45	160	107	76	38	-	5	-

TABLE 11(g)

## Disposition of Youthful Offenders (16-24) Convicted in Manitoba 1957-1961

		Suspended Sentence			Fine	Gaol	Reform.	Training School	Pent.	Death
		Total	Probation	No Prob.						
1957	Total	931	158	120	281	306	-	36	30	-
	M.	853	135	107	268	290	-	24	29	-
	F.	78	23	13	13	16	-	12	1	-
1958	Total	705	207	36	208	190	-	32	32	-
	M.	658	187	33	200	183	-	24	31	-
	F.	47	20	3	8	7	-	8	1	-
1959	Total	544	86	125	133	136	-	37	27	-
	M.	515	81	117	129	131	-	30	27	-
	F.	29	5	8	4	5	-	7	-	-
1960	Total	995	254	187	168	293	-	40	53	-
	M.	898	205	177	158	262	-	33	53	-
	F.	107	49	10	10	31	-	7	-	-
1961	Total	1131	198	318	197	322	-	23	73	-
	M.	1024	157	276	188	309	-	21	73	-
	F.	107	41	42	9	13	-	2	-	-

TABLE 11(h)

## Disposition of Youthful Offenders (16-24) Convicted in Saskatchewan 1957-1961

Suspended Sentence											
		Total	No Probation	Prob.	Fine	Gaol	Reform.	Training School	Pent.	Death	
1957	Total	611	47	94	201	256	-	1	12	-	
	M.	585	43	89	193	247	-	1	12	-	
	F.	26	4	5	8	9	-	-	-	-	
1958	Total	706	92	107	189	283	-	-	35	-	
	M.	665	82	92	180	276	-	-	35	-	
	F.	41	10	15	9	7	-	-	-	-	
1959	Total	685	54	110	165	320	-	-	36	-	
	M.	660	53	103	159	309	-	-	36	-	
	F.	25	1	7	6	11	-	-	-	-	
1960	Total	755	102	98	192	322	-	-	41	-	
	M.	721	96	91	181	312	-	-	41	-	
	F.	34	6	7	11	10	-	-	-	-	
1961	Total	927	108	158	222	392	-	-	47	-	
	M.	874	97	144	206	380	-	-	47	-	
	F.	53	11	14	16	12	-	-	-	-	

TABLE 11(i)

## Disposition of Youthful Offenders (16-24) Convicted in Alberta 1957-1961

Suspended Sentence											
		No									
		Total	Probation	Prob.	Fine	Gaol	Reform.	Training School	Pent.	Death	
1957	Total	1444	207	82	367	699	-	-	89	-	
	M.	1371	191	77	344	670	-	-	89	-	
	F.	73	16	5	23	29	-	-	-	-	
1958	Total	1646	175	187	448	713	-	-	123	-	
	M.	1542	162	159	421	677	-	-	123	-	
	F.	104	13	28	27	36	-	-	-	-	
1959	Total	1755	166	221	516	763	-	1	87	1	
	M.	1620	148	178	481	728	-	1	82	1	
	F.	136	18	43	35	35	-	-	5	-	
1960	Total	1923	213	317	495	790	-	1	104	3	
	M.	1795	196	276	453	762	-	1	104	3	
	F.	128	17	41	42	28	-	-	-	-	
1961	Total	1886	103	409	440	816	-	3	115	-	
	M.	1740	96	350	404	773	-	3	114	-	
	F.	146	7	59	36	43	-	-	1	-	



TABLE 11(j)

## Disposition of Youthful Offenders (16-24) Convicted in British Columbia 1957-1961

<u>Suspended Sentence</u>									
	Total	No		Prob.	Fine	Gaol	Reform.	Training	
		Probation						School	Death
1957	Total	2054	120	462	561	435	325	41	108
	M.	1952	105	436	538	403	325	38	105
	F.	102	15	26	23	32	-	3	3
1958	Total	2126	139	478	465	520	345	60	119
	M.	1995	121	439	447	476	345	55	112
	F.	131	18	39	18	44	-	5	7
1959	Total	2093	153	501	407	545	292	94	99
	M.	1956	133	463	392	489	292	87	98
	F.	137	20	38	15	56	-	7	1
1960	Total	2373	180	659	369	711	280	71	103
	M.	2217	154	614	347	655	280	68	99
	F.	156	26	45	22	56	-	3	4
1961	Total	2368	182	616	389	716	307	64	93
	M.	2175	161	568	360	635	307	59	84
	F.	193	21	48	29	81	-	5	9

TABLE 11(k)

Disposition of Youthful Offenders (16-24) Convicted in Yukon &amp; N.W.T. 1957-1961

Suspended Sentence										
	Total	No Probation	Prob.	Fine	Gaol	Reform.	Training School	Pent.	Death	
1957	Total	27	1	4	3	16	-	-	3	-
	M.	23	1	3	2	14	-	-	3	-
	F.	4	-	1	1	2	-	-	-	-
1958	Total	39	4	1	7	27	-	-	-	-
	M.	39	4	1	7	27	-	-	-	-
	F.	-	-	-	-	-	-	-	-	-
1959	Total	51	6	-	9	35	-	-	1	-
	M.	49	4	-	9	35	-	-	1	-
	F.	2	2	-	-	-	-	-	-	-
1960	Total	94	9	1	17	65	-	-	2	-
	M.	90	7	1	17	63	-	-	2	-
	F.	4	2	-	-	2	-	-	-	-
1961	Total	117	17	3	13	81	-	-	3	-
	M.	111	15	2	11	80	-	-	3	-
	F.	6	2	1	2	1	-	-	-	-

PERCENTAGE DISTRIBUTION-EDUCATION STATUS OF YOUTHFUL OFFENDERS  
CONVICTED IN CANADA 1957-61

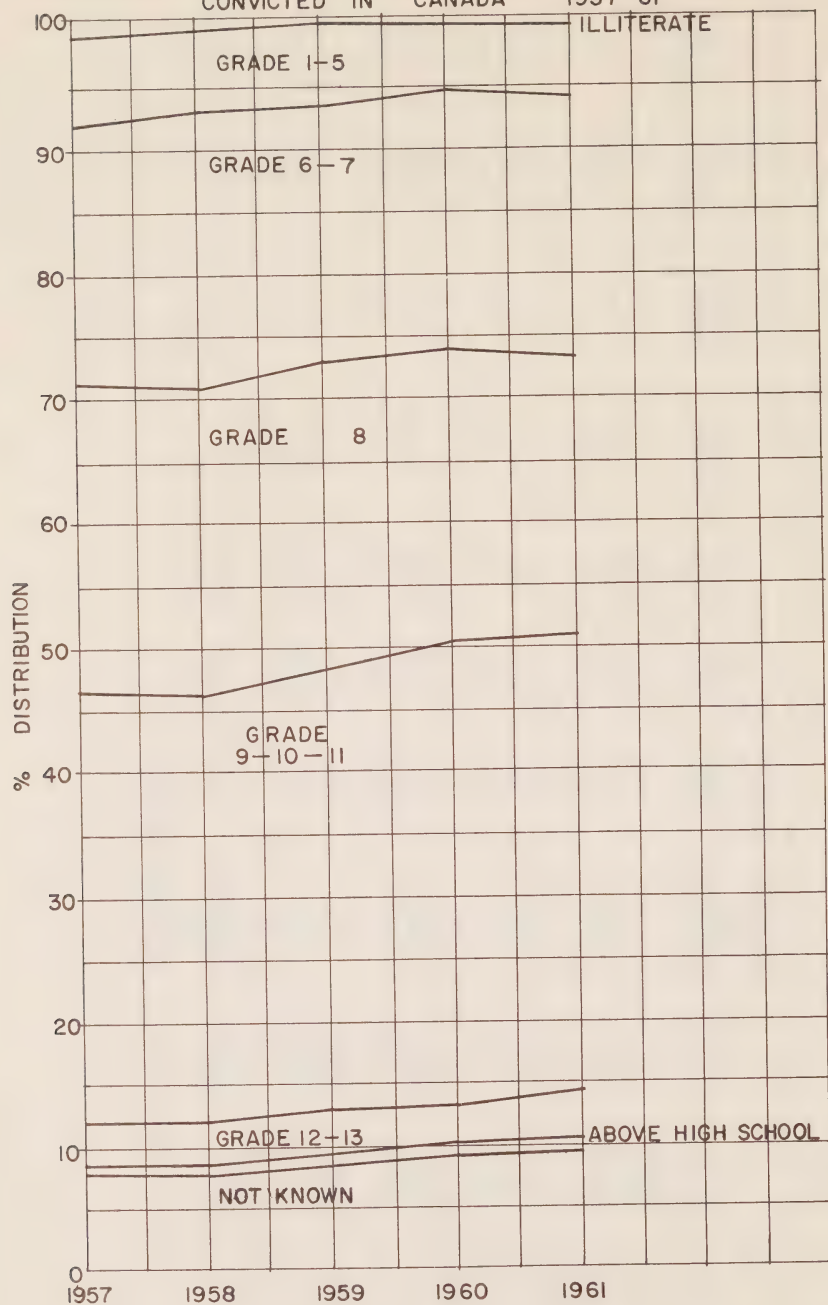


TABLE 13

The Number and Percentage Distribution of  
Education Status of Youthful Offenders (16-24) Convicted in Canada 1957-1961

	1957		1958		1959		1960		1961	
	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL	15204	100.0	16903	100.0	16422	100.0	18706	100.0	19659	100.0
Illiterate	117	0.8	120	0.7	62	0.4	83	0.4	96	0.5
1 - 5	1162	7.6	1225	7.2	1089	6.6	1126	6.0	1243	6.3
6 & 7	3124	20.5	3671	21.7	3371	20.5	3752	20.1	4118	20.9
8	3756	24.7	4120	24.4	4012	24.4	4324	23.1	4243	21.6
9 - 11	5238	34.5	5788	34.2	5927	36.1	7016	37.5	7250	36.9
12 & 13	564	3.7	605	3.6	627	3.8	726	3.9	810	4.1
Above H.S.	123	0.8	128	0.8	90	0.6	105	0.6	121	0.6
Not Known	1120	7.4	1246	7.4	1244	7.6	1574	8.4	1778	9.1



TABLE 14

Education Status of Youthful Offenders (16-24) Convicted in Canada, 1961

	TOTAL	16	17	18	19	20	21	22	23	24
TOTAL	19659	2740	3047	2826	2565	1969	2050	1687	1472	1303
Illiterate	96	7	11	3	9	12	14	13	13	14
Grades 1 - 5	1243	141	171	167	183	114	153	116	117	81
6 & 7	4118	651	613	582	519	393	373	401	308	278
8	4243	579	652	607	572	461	425	361	306	280
9 - 11	7250	1133	1216	1098	923	694	739	537	481	429
12 & 13	810	19	73	122	112	102	114	91	90	87
Above High School	121	3	6	15	20	10	19	14	16	18
Not Known	1778	207	305	232	227	183	213	154	141	116

TABLE 14(a)

Education Status of Youthful Offenders (16-24) Convicted in Canada, 1960

	TOTAL	16	17	18	19	20	21	22	23	24
TOTAL	18706	2883	3131	2586	2369	1903	1760	1539	1326	1209
Illiterate	83	9	9	10	7	7	10	13	7	11
Grades 1 - 5	1126	152	176	123	139	112	124	108	102	90
6 & 7	3752	626	630	481	460	382	343	303	281	246
8	4324	615	718	683	530	433	405	351	297	292
9 - 11	7016	1222	1278	940	905	710	603	529	445	384
12 & 13	726	19	76	97	122	87	86	100	81	58
Above High School	105	8	4	13	12	14	14	11	15	14
Not Known	1574	232	240	239	194	158	175	124	98	114

TABLE 14(b)

Education Status of Youthful Offenders (16-24) Convicted in Canada, 1959

	TOTAL	16	17	18	19	20	21	22	23	24
TOTAL	16422	2648	2687	2362	2037	1636	1524	1307	1171	1050
Illiterate	62	-	7	8	7	9	6	12	3	10
Grades 1 - 5	1089	192	165	147	112	111	95	82	81	104
6 & 7	3371	561	570	485	415	325	295	254	228	238
8	4012	612	579	614	539	420	372	342	295	239
9 - 11	5927	1045	1088	865	711	573	526	439	389	301
12 & 13	627	21	57	86	95	74	92	78	60	64
Above High School	90	6	9	8	13	3	10	17	11	13
Not Known	1244	211	202	159	145	121	128	83	104	81

TABLE 14(c)

Education Status of Youthful Offenders (16-24) Convicted in Canada, 1958

	TOTAL	16	17	18	19	20	21	22	23	24
TOTAL	16903	2552	2570	2328	2164	1770	1642	1481	1225	1171
Illiterate	120	8	12	18	8	17	15	12	12	18
Grades 1 - 5	1225	170	165	168	144	124	116	125	108	105
6 & 7	3671	554	554	515	447	408	354	328	254	257
8	4120	574	597	584	550	434	415	378	313	275
9 - 11	5788	1027	959	774	744	569	524	460	379	352
12 & 13	605	21	78	85	99	79	79	49	50	65
Above High School	128	11	11	9	18	15	19	14	17	14
Not Known	1246	187	194	175	154	124	120	115	92	85

TABLE 14(d)

Education Status of Youthful Offenders (16-24) Convicted in Canada, 1957

	TOTAL	16	17	18	19	20	21	22	23	24
TOTAL	15204	2236	2426	2090	1917	1425	1474	1371	1163	1102
Illiterate	117	6	14	14	16	12	16	11	11	17
Grades 1 - 5	1162	158	177	141	118	108	129	116	111	104
6 & 7	3124	462	536	440	374	292	275	291	231	223
8	3756	525	575	548	506	327	371	336	301	267
9 - 11	5238	872	885	711	667	492	496	444	340	331
12 & 13	564	17	71	76	89	69	78	61	50	53
Above High School	123	11	8	8	14	16	13	19	17	17
Not Known	1120	185	160	152	133	109	96	93	102	90

# EMPLOYMENT STATUS CONVICTED YOUTHFUL OFFENDERS (16-24) CANADA 1957-61

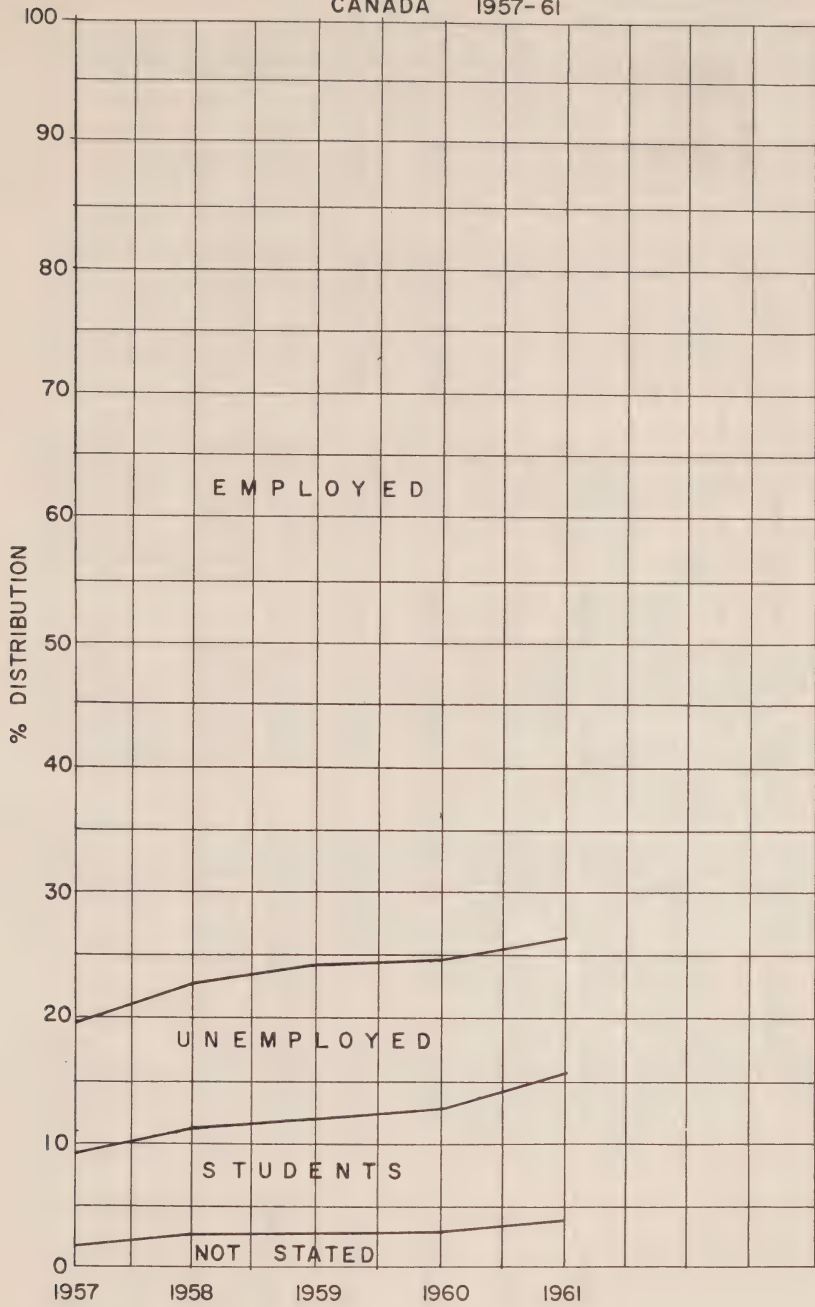




TABLE 16

The Number and Percentage Distribution of Employment Status of  
Youthful Offenders (16-24.) Convicted in Canada - 1957-1961

	1957		1958		1959		1960		1961	
	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL	15204	100.0	16903	100.0	16422	100.0	18706	100.0	19659	100.0
Employed	12244	80.5	13056	77.2	12447	75.8	14100	75.4	14536	73.9
Unemployed	1491	9.8	1939	11.5	1935	11.8	2197	11.7	2169	11.0
Student	1193	7.9	1506	8.9	1631	9.9	1983	10.6	2316	11.8
Not Stated	276	1.8	402	2.4	409	2.5	426	2.3	638	3.3

TABLE 17

EMPLOYMENT STATUS OF YOUTHFUL OFFENDERS (16-24) CONVICTED -  
CANADA 1957-1961

	TOTAL	16	17	18	19	20	21	22	23	24
1957										
TOTAL	15204	2236	2426	2090	2917	1425	1474	1371	1163	1102
EMPLOYED	12244	1062	1624	1741	1733	1296	1380	1238	1090	1020
UNEMPLOYED	1491	444	425	199	124	84	62	50	47	56
STUDENT	1193	670	324	110	38	22	11	7	6	5
NOT STATED	276	60	53	40	22	23	21	16	20	21
1958										
TOTAL	16903	2552	2570	2328	2164	1770	1642	1481	1225	1171
EMPLOYED	13056	1082	1571	1874	1853	1592	1487	1372	1132	1093
UNEMPLOYED	1939	534	513	272	209	115	103	82	63	48
STUDENT	1506	850	426	125	63	25	11	2	2	2
NOT STATED	402	86	60	57	39	38	41	25	28	28
1959										
TOTAL	16422	2648	2687	2362	2037	1636	1524	1307	1171	1050
EMPLOYED	12447	1060	1591	1900	1762	1461	1399	1228	1064	982
UNEMPLOYED	1935	575	510	252	184	124	96	59	82	53
STUDENT	1631	907	481	155	48	18	7	6	7	2
NOT STATED	409	106	105	55	43	33	22	14	18	13
1960										
TOTAL	18706	2883	3131	2586	2369	1903	1760	1539	1326	1209
EMPLOYED	14100	1113	1848	2071	2012	1710	1590	1399	1235	1122
UNEMPLOYED	2197	587	595	279	240	139	122	104	67	64
STUDENT	1983	1073	597	178	78	23	12	9	6	7
NOT STATED	426	110	91	58	39	31	36	27	18	16
1961										
TOTAL	19659	2740	3047	2826	2565	1969	2050	1687	1472	1303
EMPLOYED	14536	926	1656	2191	2144	1715	1831	1518	1343	1212
UNEMPLOYED	2169	422	537	313	249	169	151	125	91	62
STUDENT	2316	1199	676	257	106	37	20	8	9	4
NOT STATED	638	143	178	65	66	48	48	36	29	25



## APPENDIX "E"

INTAKE PROCEDURE IN THE VANCOUVER JUVENILE COURT - (Reprinted from the Report of the Standing Committee on Probation of the Association of Juvenile and Family Court Judges of Ontario (1961).

As soon as a complaint is made or information laid against a juvenile (age in B.C. up to 18th birthday), and before the case comes before the presiding judge, the Probation Officer immediately goes into action.

He gains first hand knowledge of the offense, including all material contained in the Police or complainants' report. The Probation Officer is the first person to have possession of the report. The next step is to interview the juvenile and his parents or guardians who are advised of the allegations. They are briefed as to their rights, and what to expect and meet when they appear in court. It is established as soon as possible whether a plea of guilty or not guilty will be entered. If in the negative, no further action or investigation is carried out by the Probation Officer assigned to the case until after the necessary trial and a finding of delinquency made.

If, as is usually the case, the child, with the agreement of his parents or "guardians" wishes to "own" up to the allegations, a full length interview is conducted and an "intake" prepared.

The intake consists of a summarized picture of the child, covered by the following headings:-

- (a) General information such as birthday, nationality, school, mental status, occupation, etc. of parents together with names and ages of siblings. Other special information included here such as previous records, drinks, smokes, mother works, psychiatric examination, wardship, special class in school, exposure to narcotics, etc.
- (b) Complaint and child's story.
- (c) Home and family.
- (d) School
- (e) Work.
- (f) Interests and recreation.
- (g) Health and personality.



- (h) Other agencies.
- (i) Observations.
- (j) Suggested Plan.

As the above intake outline suggests, quite a lot of information must be elicited from other sources. There are many agencies to draw on, such as the school system, other courts, hospitals, City Social Assistance Department (relief), psychiatric clinics and institutions; in fact the whole gamut of public and governmental organizations are used to provide background information, not only about the child in question, but the total family constellation. This looks like a gigantic task, but in fact it is relatively easy in our City because of a high degree of inter-agency co-operation that presently exists. A trained Probation Officer can, from his interview, obtain or pinpoint other agencies that have been or are still active with the particular family and in some cases, relatives. Furthermore, the Social Service Index, gives us a list of agencies having knowledge of "problem" families, or "multi-problem families" as we now call them, and other types of families too. All this can be started by one telephone call to the Index.

With a full intake, using the sources listed above, the pre-court intake becomes a concise social history from which the Probation Officer can make a tentative assessment of the total situation. He is then in a good position to offer suggestions, provide information, or even make a recommendation for disposition of the case, if and when the Judge requests such. In this manner, the long delays with subsequent trauma or indecisions are, for the most part, obviated. In the "average" case, an undelayed disposition can be made and justice carried out. If probation is merited or required, casework can be started officially. In fact, a certain start is made on therapy from the initial visit of the Probation Officer. It is psychologically important to "attack" the problem while it is still "hot" or the psychological climate is most favourable.

The above resume, of course, makes everything look easy and simple. Indeed, there are some cases which are relatively easy to handle when there are no complicating factors involved.

Like our "hard-core" multi-problem families, which experts claim comprise about 20% of our problem group yet devour about 80% of agency efforts in time and money, we, as Probation Officers, find a hard-core of delinquents that require the application of more searching and professional techniques. This is the "not so rosy" side of the Juvenile Court's challenges.

## APPENDIX "F"

### COUNSELLING - TIME STUDY OF THE SUPERVISION OF JUVENILE PROBATIONERS IN ONTARIO (unpublished)

One of the most gnawing questions which probation officers have to face is how successful is probation as a means for treating the juvenile offender. To get an accurate answer to that would necessitate a complex and long-term survey - and yet in truth it is the most crucial one which can be asked. As we have neither the time nor the means to make such a study, we have attempted a far less sophisticated study which was directed to trying to find out just how much time was being spent on the treatment of juvenile offenders who are on probation. "Treatment" we defined narrowly to include only direct or collateral counselling, meaning counselling given to the probationer and/or to parent, clergyman, teachers and others concerned with the child's problems. Changing a child's behaviour takes time: How much time was being spent with the child and others in trying to do this?

Our survey covered the period from January to June, 1962. We received replies from 78% of the counties in Ontario. A major omission in our survey was three cities - Toronto, Ottawa and Sudbury, where the municipally employed officers supervise juvenile probationers.

It should be noted that the survey is only based on estimated percentages of time spent on juvenile matters and an estimated percentage of that time actually spent in counselling. These estimates were made by the supervisors of the officers who have an approximate knowledge of how an officer divides his time.

The results were broken down into categories showing counties where only one officer dealt with juveniles, where two officers dealt with juveniles and so on up to where four officers do so. In the returns that we received, only six officers were exclusively assigned to juvenile matters - the other 56 officers only spent a part of their time on juvenile matters. Where there was more than one officer in a county doing some juvenile work, we have collated the several results in an attempt to portray the treatment given in terms of one man's working week (36 1/4) which we use as the standard measurement throughout.

Our final breakdown was in terms of the estimated number of minutes spent each week on each probation case in terms of counselling either the probationer himself and/or the parents and other interested persons. In 9% of the cases less than 10 minutes per week were spent on counselling. In 26% of the cases between 10 and 20 minutes were so spent. In 9% of the cases between 45 minutes and 1 hour, and 20 minutes were devoted to direct or collateral counselling. About 76% receive less than 1/2 hour each week.

## Sizes of Caseload

In areas where there is only one officer dealing with juvenile matters, 77% carried a caseload of less than 20. But it should be borne in mind that in 69% of these areas less than 50% of the officers' time was spent on juvenile matters. Actually spent in counselling, 61% of the officers had less than 30% of their time, and 30% of the officers had less than 10% of their time to do counselling. One officer who worked on juvenile cases exclusively, had a caseload of 56, while another officer who only had 45% of his time to devote to juvenile matters had a caseload of 49.

In areas where there were officers working on juvenile matters, 57% shared a caseload of less than 50; 35% of the officers carried joint caseloads of between 50 and 80 probationers. In only one office was the caseload between 80 and 90.

Where there are 3 officers sharing the juvenile duties in a county, 2 officers had caseloads between 50 and 70, and 1 officer divided a caseload between 110 and 120.

Where there are 4 officers supervising juvenile probationers in one area, they supervised between 130 and 140 probationers. In the other 2 such areas, the caseload shared by the 4 officers was between 70 and 80.

In only 2 areas was there the equivalent of one man's full time spent in direct and collateral counselling, and in these instances the caseload was 76 and 79 cases.

It must be borne in mind that most of the officers have other important legal and administrative duties, such as investigations of the court and that they also must divide their time servicing the adult courts and family courts as well. These figures are also only estimates which must be read in context of area served, density of population, number on caseload of all types (adult, family, juvenile) and other factors. So they are not an accurate picture, but the direction in which they point should cause all of us concern.

So bearing in mind all of the inadequacies of this survey we will still hazard some observation which would seem to arise out of even such a cursory study.

From experience we would venture to say that most of the time spent in counselling is in direct counselling of the probationer in the office. With such little time available each week on each case we can well surmise that there is not nearly enough time to spend with collateral persons - the parents, the teachers and others who see these children every day and who can play such a large role in changing behaviour.

It is obvious to us that for any significant success there must somehow

be found more time to spend with each child and his or her parents and other adults concerned.

One way in which this can be brought about is by having more probation officers. But we also have felt that where an officer's work is too diversified (i.e. handling adult probation, parole and domestic counselling cases) the tendency is to give less priority to the young probationers because the adult problems appear to be greater and more urgent. A greater degree of specialization on juvenile problems seems to be desirable. As noted above, out of 56 officers covered by the survey, only 6 worked exclusively with juveniles.

If the time available for treatment is by necessity so short, officers must be very well trained and skilled in counselling for effective treatment to take place. The selection of staff must of necessity be of prime importance.

This limited survey has made us painfully aware of the need for research to be done on an aggressive and continuing basis in the entire field of the juvenile offenders. How effective is probation as a treatment method? What treatment methods work best? What is the maximum caseload for effective case-work with juveniles?

The long-term results of our work will only be satisfactory when adequate time is available to spend on each child offender and the particular problems he faces in the environment in which he lives.

Alex K. Gigeroff,  
Probation Officer.

Ottawa, Ontario  
January 9, 1963.



## APPENDIX "G"

Section on Training of Personnel for Services to Juvenile Delinquents, from the Report of the Committee on Juvenile Delinquency of the Social Planning Council of Metropolitan Toronto.

A comprehensive study of this subject cannot at present be attempted by the Sub-committee since to do the subject justice more time would be required than is now available. It has been found necessary, therefore, to limit our study, and the extent of the limitations we impose might best be described by the following preliminary statements which define the areas examined.

### WORKERS EMPLOYED IN THESE SERVICES:

For our purpose this phrase had to be defined in its narrower sense, i.e., institutional workers, probation officers and after-care officers. At the same time it was acknowledged that personnel in preventive services and in law enforcement services should properly be included in any extensive programme of training designed to improve the total service to the delinquent child.

### TRAINING:

There are basically two types of training for workers in this field:

- (1) professional training obtained in an educational institution - usually gained before the worker enters the field, - and
- (2) training usually acquired while the worker is employed on the job. This study is limited to the second type and does not concern itself with professional training other than to remark that as many professionally trained personnel as is possible and appropriate should be employed in services for the delinquent child, and that any programme of training workers for this field should include as a first requisite, the promotion of basic professional training in such disciplines as psychiatry, psychology and social work.

### IN-SERVICE TRAINING:

Since in-service training is a term which is subject to various interpretations we feel it is necessary to make a distinction between three terms which are often used synonymously, i.e., "orientation", "staff development", and "in-service training".

### Orientation

- we consider as a process which introduces the worker to the specific functions of any new job and which acquaints him with the facilities of the institution, with other personnel and with the day to day routines which are in effect.

### Staff development

- we consider to be a continuous process within the institution involving all staff, trained or untrained, and which is effected by such media as staff meetings, conferences, libraries, visual aids, manuals, seminars and workshops, etc.

### In-service training

- is here considered to be a systemized form of training given to the worker who is presently employed by the institution and who has lacked previous appropriate professional training. Its purpose is that of improving his skill in working with people, of widening his knowledge of the dynamics of human behaviour and of the impact of social forces upon that behaviour, and of acquainting him with the concepts of basic social work philosophy.

## THE NEED FOR TRAINING:

(1) Those who are caring for delinquents have a dual responsibility: in order to safeguard the community from further risk, the delinquent must be controlled; in order to ensure that the delinquent returns to the community with more positive attitudes and with a greater awareness of his responsibilities, he must be helped. As society in general, and as workers in the field particularly, are increasingly brought to recognize that the treatment function needs to be given much greater emphasis, institutions are attempting to modify their programmes in this direction. In many institutions the recognition of the importance of the treatment aspect has been signified by the hiring of a social worker, a psychologist, a psychiatrist, only to be followed, inevitably, by the realization that any attempt to superimpose the clinical and trained approach upon the present institutional philosophy is doomed to failure. To look for a solution in the direction of a totally professionally trained staff, is completely impractical. The solution can only lie in giving untrained staff an awareness of the philosophy, purpose and methods of the clinical approach in order that all working with the delinquent can work as a team, integrating their efforts in such a way that the institutional milieu is truly therapeutic.

We feel it important to stress that all who are working with the delinquent must be given that awareness; too often is it the case that we think in terms of one particular group of staff, e.g. supervisors or houseparents. Yet, to provide within the walls of an institution, a social structure in which the delinquent can develop positive experiences in his relationship to other individuals and to the group, all who are working within the setting must be able to make their contributions - the cook and the gardener no less than the social worker or the supervisor.

(ii) Caring for delinquent children is a task which can put great strain on the individual. The children who come under the care of the court or the institution do not come willingly and often bring with them a hostile attitude to those in authority who are responsible for their care. However well the personal qualities of the worker may have equipped him to deal with these attitudes, it is unlikely that he will be able to continue dealing with them day after day in a constructive and positive manner unless these personal qualities have been strengthened by the knowledge, skill and attitudes which come from training. Indeed, it is perhaps true to say that the more dedicated the worker the most likely he is to have feelings of anxiety about his work and to have conflicting emotions for those entrusted to him. Unless he is given the support and the security which comes from constantly increasing his knowledge of the work, he may become cynical, feel insecure or decide that this is a hopeless task and that he would be happier elsewhere.

(iii) The work of supervising a group of adolescents is not one which is immediately attractive to many and its attraction is not increased by the multiplicity of duties which the worker finds himself having to perform or by the low salaries and poor working conditions with which he often has to contend. Moreover, the possibilities of promotion are not as great as in most other fields of endeavour; rarely are there opportunities for further education and training and even more rarely where these are provided are salary increases geared to successful completion of the courses. In brief, the job is very much of the dead end variety. In terms of job mobility too, the work of a supervisor or houseparent has no attraction because, unless he has had some form of training, his job has not equipped him to work in other fields, only in other institutions.

To treat the delinquent, we must have trained staff. However, in order to ensure that staff have the capacity to absorb training, we must be more critical in our recruitment and selection of them; this will only be possible to the desired degree when the job is one which, to the applicant, holds future rewards as well as present satisfactions gained from the nature of the work itself. Experience has demonstrated that better quality of staff are attracted to an organization which offers a training programme.

(iv) There is a shortage in our field not only of professionally trained workers but also of able, trained and experienced personnel for staff training. This situation will not be improved if special courses are organized to suit the needs of one type of agency or one type of worker. There is a natural tendency



for organization to organize courses designed specifically to improve the knowledge and skill of the institutional supervisor, the after-care officer, the probation officer, the child care worker and so forth. Not only does this make impossible demands upon the limited number of training personnel, it is questionable whether, in fact, we are doing a disservice to the staff concerned by not examining those elements which are common to each of these services, designing a course which embraces these elements and offering the course to all untrained workers in these related fields. One apparent advantage would be that of enabling the worker to move more readily from his present work to work in a different but closely related field.

### THE CONTENT OF IN-SERVICE TRAINING:

The essential content of a course of training which is required by those who serve children with problems is suggested to be as follows:-

- 1) - An understanding of human growth and behaviour, both individual and group, from both the psychological and the sociological aspect.
- 2) - A knowledge of counselling and of the techniques of interviewing while recognizing the implications of an institutional and/or an authoritarian setting where the majority of clients are resistant to help. This would include an understanding of the philosophical principles upon which good counselling and interviewing skills are based.
- 3) - The development of skills in working with groups.
- 4) - A knowledge of the community and its resources in serving those with special needs (i.e., the social services) and a knowledge of the philosophy and application of the law.
- 5) - On the job supervision of the trainee.

It is suggested that these five basic areas are common to all working with the delinquent child regardless of their particular roles. Beyond this basic background of knowledge, skills and philosophy, each branch in the field should develop an understanding of those problems which are peculiar to its role. For example, the worker in the institution should have a firm grasp of institutional principles and practices and of how the institutional programme can be organized for the maximum benefit of those in care; the court worker should have knowledge of his legal responsibilities and of the services which his community provides; the after-care worker must have knowledge of family counselling, of employment possibilities, and of community services.



In this regard we are in accord with the following extract from the booklet "Training Personnel for Work with Juvenile Delinquents".\*

"(In) the planning of this semi-professional training programme for houseparents it should be pointed out that if the programme is focussed too narrowly on institutional work, it might become a dead end street which few would wish to enter. On the other hand, if training for houseparent work were planned so as to provide ----- some of the knowledge essential for probation or parole work, people might think of houseparent work as part of a career in serving children who have run foul of the law. It might be emphasized that if more probation officers and parole officers could have houseparent training and work in an institutional setting - where they would acquire a deep understanding of the needs and problems of delinquent children as well as of the strengths and limitations of residential treatment - the gap now so frequently existing between those caring for children in the training school, and those working with them in probation and after-care might at least be closed."

#### METHODS OF ORGANIZING IN-SERVICE TRAINING:

There are various methods by which an agency or institution or a group of agencies and institutions can develop a programme of training. For our purpose, we feel that these methods can be grouped into three broad categories. These are outlined below together with the respective advantages and disadvantages which we feel are inherent in each:-

##### a) - Operated in the organization by the organizations

The advantages of this method are that it is not expensive since the teaching is carried out by salaried staff, it can involve many staff members at one time and both supervisors and administrators can be closely involved, with the result that agency policies can be adapted to a situation in which staff skills and knowledge are increasing. Its disadvantages are those of the limitations which may result from the teaching being done by agency staff who may be very skilled workers but inferior teachers, and the danger of such a training scheme becoming ingrown so that self criticism tends to disappear and there is little infusion of new ideas.

It is agreed that to some extent these disadvantages are minimized by

---

\*Children's Bureau, U.S. Department of Health, Education & Welfare, #348-1954.

the agency using additional teaching staff recruited from outside thus providing an opportunity for added stimulation and for the training team to use specialists from without as consultants in planning and effecting training. Such a modification would, of course, involve additional expense.

b) - Internal course supplemented by external courses

In this instance the agency training programme is supplemented by having trainees take advantage of courses offered elsewhere in the community. This has the advantage of avoiding duplication of similar courses being organized by related agencies, of giving trainees the opportunity of meeting with workers in related fields, and where the external course is organized under university auspices, of providing the worker with the opportunity of obtaining university credits which will be of special value should he decide to later embark upon full professional education.

The disadvantages here would be those of increased cost plus the fact that the integration of the various parts of the course become an increasingly complex matter.

c) - Courses organized entirely outside the agency

An in-service training programme which is operated entirely outside the agency has the advantages of (b) above but has one very real and important disadvantage. The integration of teaching and practice is made very difficult by the fact that teaching is carried out in one setting and job practice in another. This difficulty is emphasized if it should be the case that senior supervisory staff or administrators are not involved in the training scheme for should this happen, the situation may arise where ground floor staff practices are moving forwards at a faster rate than are agency policies.

THE PROBLEM OF SUPERVISION ON THE JOB:

It is our belief that no matter how training courses are organized - within the agency, outside the agency or a combination of both - one basic problem is common to them all, namely, how is the staff member assisted in putting his learning into practice? The supervision of the worker on-the-job is the most important aspect of training and yet there is an obvious shortage of those who have the experience, the training and the personality which this work requires. We believe that concurrent with any in-service training course, there must also be provision made for training those who will be responsible for the on-the-job supervision of the trainees in those cases where agencies do not have personnel capable of performing this important task.

In addition to providing for adequate practical supervision, organizations should make every effort to select and control the volume of work of the trainee and the responsibility expected of him. This selection and control, as

well as adequate supervision, will, of course, be influenced by the pressures of work for staff generally, by the time sequence of the course, by geographical considerations and many other factors. The Committee wishes to underline, however, the incalculable value of planning training programmes in such a way that course content and practical experience are integrated. This has many implications, for example: consideration of regional programmes, co-ordination among different organizations or branches of organizations, and the development of supervisory staff. The value of any training programme will also, of course, be greatly affected by the quality and availability of on-going supervision in the organization to ensure the best preparation for personnel going into training programmes and the best use of it when they return to regular job responsibilities.

In an organization where different staff members may have very different job responsibilities an in-service training programme should be planned with sufficient flexibility to accommodate these functional differences. Presuming that certain course content and material will be universally applicable to all staff, the programme should also take into consideration specific characteristics of certain job responsibilities such as those involved for houseparents, after-care workers, administrators, etc., and should tailor certain aspects of the programme to meet their needs.

## APPENDIX "H"

Observations on the Framework of Correctional Research in Canada, from Grygier, "Current Correctional and Criminological Research in Canada: Present Framework, Trends and Prospects", 3 The Canadian Journal of Corrections, 423, 424-425, 437-440 (1961).

The term "research" adopted here denotes a systematic inquiry or investigation in pursuit of knowledge, supported by careful analysis of the data and, whenever appropriate, by experimental and statistical evaluation. The term "correctional and criminological" research is interpreted fairly broadly and includes investigation into the causes and treatment of crime and delinquency, and of anti-social behaviour associated with criminality, such as drug addiction, alcoholism, sexual aberrations, etc. The term also covers activities which precede formal correctional treatment but have substantial bearing on the prevention and treatment of crime. Thus, research into police practice, police records, sentencing policy, etc., falls into the broad definition accepted here.

On the other hand, reports of activities of any agencies or institutions, statements of policy or opinion, collections of data of local or temporary significance or without clearly defined scientific objectives, and descriptions of correctional services without analysis and evaluation, are not classified as research.

This is the framework we adopted in our questionnaire on current correctional and criminological research in Canada; the replies to this questionnaire, which was sent to universities, and to relevant government departments and private agencies, and also published in the Canadian Journal of Corrections, form the main data on which this survey is based....

### Framework of correctional research in Canada

....The existing framework, incentives and finances have not produced many technically advanced investigations. In order to expand, this type of research will require high calibre investigators, test materials, interviewing schedules, and the help of modern electronic computers. It is, therefore, important to consider where the main body of correctional research should be concentrated. There appear to be three possibilities, not entirely mutually exclusive:

- (a) The first way is to concentrate applied research in research units attached to government departments. This has the obvious advantage of relating the research work very closely to the immediate problems facing the administrator, and to the data obtained through administrative channels. ....This type of



framework has been particularly successful in Great Britain, where the Home Office Research Unit is well staffed, not only in terms of sheer manpower, but also of leadership, scientific imagination, and technical skill. One must remember, however, that the Home Office deals directly with all types of institutional treatment, short term and long term, general and specialized, for adults and for juveniles. It also deals with probation and the British equivalent of parole. It, therefore, covers the ground which in Canada would be the competence of the Federal Department of Justice, the National Parole Board, the Dominion Bureau of Statistics, and the Provincial Departments of Reform Institutions, of the Attorney General, of Welfare, of Social Welfare and Rehabilitation (with a different area of competence from that of the Departments of Welfare), and to some extent of Health. Private agencies also carry a large volume of correctional work.

Thus, although it seems that the best place for operational research should be near the desk of the administrator, in Canada there is a multitude of such desks and the adoption of this principle might mean a multitude of research units, each carrying out its own researches. Whatever the efforts of the co-ordinators, duplication and waste may occur. However desirable it may seem to concentrate all research efforts at one large unit attached to the Federal Department of Justice, it might possibly develop that other departments would supply the minimum of information to Ottawa and do research themselves. It would also be easier for the Federal research unit to rely mainly on directly available sources of data, and therefore to concentrate on the problems of long term adult prisoners at the expense of probationers, short term prisoners, and juvenile offenders.

- (b) The second possibility is to concentrate research at the universities. Throughout the world, university departments have always carried out research in the criminal sciences. In Europe, not only legal research but also the bulk of criminological studies is done at law schools and faculties of law; in the United States intensive criminological researches have tended to be concentrated in sociology departments; valuable contributions have come from the departments of psychiatry,

psychology, anthropology, and social work. It is apparent from our survey that in Canada the majority of research projects in the field of corrections are reported from the schools of social work.

On the other hand, in Canada university research suffers also from serious limitations, the main being a chronic lack of funds and technical research assistance. It is true that graduate students are among the best research assistants and often good independent investigators: cheap, hard working, and motivated to complete their researches on time. But one can never disregard the advantages of having adequate clerical help, research secretaries who know the sources of information, and computing clerks who can carry out necessary calculations speedily and accurately without being instructed on every detail of a routine operation.

- (c) The third possibility, independent research centres, may offer a combination of the advantages available in the other two solutions. Abroad, two such centres in the field of criminal sciences have just been organized: the Institute of Criminology, Cambridge, England, and the Institute for the Study of Crime and Delinquency, Sacramento, California.

The first of these is closely linked with Cambridge University, and its director is the first holder of the Chair of Criminology at that University; the second is headed by the Director of the California Department of Corrections, and the staff seem to come mainly from the Civil Service but, according to the information leaflet issued by the Institute, its purpose is "to initiate and conduct research in the correctional field, with emphasis on inquiries which cannot be undertaken by public agencies".

It is too early to judge the efficiency of these two Institutes, but it is characteristic that the first one is a development of a university department, and the second, of the research units of the California Department of Corrections and the California Youth Authority. It is evident that the new framework is deemed to have some advantages over both pure university and pure civil service structure.

.....

## Conclusions

(1) There is a growing recognition of the need for research in the field of the criminal sciences in Canada. While some private funds may be available and support from large foundations may be necessary, especially in the initial stages of the development, support from public funds is also essential. A good example of enlightened policy in this respect is provided by the State of California which, in addition to supporting university research, spends 1.4 per cent of the budget of the Department of Corrections on research and evaluation studies. This State has adopted the sound principle that any public body spending large sums of money should support research to evaluate and improve its functioning.

(2) There is a case for establishing small but efficient research units attached to relevant government departments. The functions of these units might include:

(1) Planning of research strategy; providing channels of communication between the research workers and the administrators; and organizing facilities for delegated researches. This activity would involve diagnosis of the main problems for study and evaluation, and presentation of research findings for government action.

(2) Direct research activity, especially on problems requiring immediate administrative decisions; research based on department files, internal reports and other data available through routine administrative procedures. Even if the amount of direct research carried by government research units is limited, some studies will be indispensable both for the efficient operation of the correctional system and for maintaining the morale, status, and skill of staffs.

(3) In the future, the bulk of research may well be tackled by special interdisciplinary centres established at one or more large universities. Such centres might offer facilities for advanced studies, to be shared by the graduate schools with which they would be closely linked, since most of the permanent staff would continue to teach in their respective departments. In matters of applied research they would work in close co-operation with government research units.

(4) For the time being, all fundamental and theoretical research, and much of applied (operational) research is concentrated at the existing university departments. The work of these departments might be greatly

facilitated if the proposed government research units provide incentive, channels of communication and facilities, including grants for research equipment and assistance, and for specific, relevant projects. In return, some members of the academic staff might help private agencies and government research units in their work, not only by their investigations, but also by acting as research consultants on general strategy and on specific projects. The results of our survey of the current researches certainly support this contention.



















